SUPREME COURT OF THE UNITED STATES.

No. 492.

WILLIAM H. COOK, APPELLANT,

vs.

CHARLES LILLO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

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UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CHARLES LILLO
vs.
WILLIAM HENRY COOK. } No. 3966.

To the honorable the judges of the circuit court of the United States for the district of Louisiana in the fifth circuit:

Charles Lillo, a subject of the King of Spain, residing temporarily in the city of Paris, France, brings this his bill against William Henry Cook, a resident of the city of New Orleans, and a city of the State of Louisiana, and thereupon your orator complains and says, that the said William Henry Cook is justly indebted to him in the sum of five thousand dollars, with interest thereon at the rate of eight per cent. per annum, from the 29th day of March, 1875, until paid, and five per centum for attorney fees on the aggregate amount of the said principal

2 sum and interest, for this, to wit:

That your orator is the holder and owner of two certain promissory notes for the sums respectively of twenty-one hundred and ten, and thirty-one hundred and sixty-five dollars, dated at New Orleans on the 26th March, 1862, made payable two years after date, drawn by the said William Henry Cook, to his order and by him endorsed, and bearing interest at the rate of eight per cent. per annum from after maturity until paid; which notes by partial payments made by the said Cook, and endorsed thereon, have been reduced in principal respectively to the sums of two thousand and three thousand dollars, on which the interest accrued up to the 29th March, 1875, has been paid, leaving the interest which has run since that date still due and unpaid.

Your orator avers that the said Cook now refuses, notwithstanding repeated promises heretofore made, to pay the balance of five thousand dollars with the interest accrued as aforesaid thereon, although thereto amicably requested.

And your orator further shows that the two notes held by him

3 as aforesaid formed part of a series of ten notes, amounting together to the sum of eleven thousand one hundred dollars, all drawn by the said Cook to his own order, and by him endorsed, and dated at New Orleans on the 26th March, 1862, five of them being made payable one year after date, and respectively for the following sums, viz, one hundred and thirty-seven $\frac{42}{100}$ dollars, one hundred and ten dollars, one hundred and sixty-five dollars, eighty-two $\frac{50}{100}$ dollars, and fifty-five dollars, the other five being made payable two years after date, and respectively for the following sums, viz, twenty-six hundred and thirty-seven $\frac{42}{100}$ dollars, one thousand five hundred and eighty-two $\frac{50}{100}$ dollars, one thousand and fifty-five dollars, and the two notes aforedescribed now held by your orator, which series of notes was originally furnished by the said Cook to Bernard Soulié, as representing the amount of a loan of eleven thousand dollars made by the latter to the said Cook on or about the 26 March, 1862, as shown by an authentic act passed at said date, before P. C. Cuvelier, a notary public in and for the city of

4 New Orleans, and parish of Orleans a duly certified copy of

which act, marked Exhibit A, is hereto annexed. (Transcribed on page of this transcript.)

And your orator further sheweth that the said Cook stipulated in said act, and bound himself to pay the fees of the attorney at law who might be employed for the purpose of instituting judicial proceedings for the recovery of the amount of said notes, or any part thereof when due, said fees being fixed at five per cent. on the amount sued for.

And your orator further avers and shows that in order to secure the punctual payment of the said notes at maturity, together with all eventual interest, costs, and attorneys' fees which might accrue thereon, the said William Henry Cook did, by the said authentic act passed before P. C. Cuvelier, notary, on the 26 March, 1862, specially mortgage and hypothecate in favor of the said Bernard Soulié, and any subsequent holder of said notes, the following described property, to wit:

A certain portion of ground together with the buildings and improvements thereon, the rights, ways, privileges, servitudes, and
5 appurtenances thereunto belonging, situate in the first district of the city of New Orleans, in the square bounded by Race, Constance, Annunciation, and Robin streets, measuring, in French measure, one hundred and twenty feet front on said Race street by one hundred and fifty feet in depth between parallel lines, and in American measure one hundred and twenty-seven feet, ten inches and four lines front, by one hundred and fifty-nine feet, ten inches and three lines in depth, more or less; said portion of ground being composed of, 1st, lot No. 12 of square No. 41, of suburb Lacourse, acquired by said Cook at sheriff's sale, at the suit of A. & A. Mercier vs. J. F. Canongr, in the succession of Jean Mercier, as per deed of the sheriff of the parish of Orleans, dated 27th July, 1844, recorded in the late register of wills' office in book B, fol. 185, et seq.; 2d, of lot No. 6, on a plan of E. Gotthiel, dated 5th May, 1849, deposited in the office of A. E. Bienvenue, notary, as plan No. 5, acquired by said Cook from Mrs. J. E. G. Chase, per
6 act before the said notary, Bienvenue, dated 8th April, 1859; and 3d, of lot No. 5 on the same plan, acquired by the said Cook from F. W. Palmer, per act before the same notary, dated 11th May, 1859. And the said Cook bound himself not to alienate or encumber the said mortgaged property to the prejudice of said act, which should bear confession of judgment in favor of any holder of the aforedescribed notes, and entitle him, in default of the punctual payment, to cause the said property to be seized and sold for cash to the highest bidder, without appraisement, the said Cook waiving and renouncing the benefit of all laws relative to the appraisement of property seized and sold under executory or other legal process.

And your orator sheweth further that the said two notes held by him matured on the 26–29th March, 1864; that on the 11th October, 1864, the said William Henry Cook paid the interest which had accrued as well as that which was to accrue thereon, up to the 26th March, 1865; that on the 30 March, 1867, he paid the interest which had
7 accrued thereon from the 26th March, 1865, to the 26th of March, 1867; that on the 29th March, 1868, he paid the interest which had accrued thereon from the 26th March, 1867, to the 26th March, 1868; that on the 29th March, 1869, he paid the interest thereon for the year extending from the 26th of March, 1868, to the 26th March, 1869; that on the 11th April, 1870, he paid the interest which had accrued from the 26th March, 1869, to the 26 March, 1870; that on the 6th April, 1871, he paid the interest due thereon for the year extending from the 26 March, 1870, to the 26th March, 1871; that on the 18th April, 1872,

he paid the interest which had accrued thereon from the 28th March, 1871, to the 28th March, 1873; that on the 25 June, 1873, he paid the interest which had accrued thereon from the 28th March, 1873, to the 28th March, 1873; that on the 11th April, 1874, he paid the interest which had accrued thereon from the 28 March, 1873, to the 28th March, 1874; and that on the 31st March, 1875, he paid the interest which had accrued thereon from the 28th March, 1874, to the 28th March,

8 1875, and on the same date also paid one hundred and ten dollars ($110) on account of the principal of the note for $2,115, and one hundred and sixty-five dollars ($165) on account of the principal of the note for $3,165, thereby reducing the principal of the said two notes respectively to two thousand ($2,000) and three thousand ($3,000) dollars, the interest which has accrued on said balances of $3,000 and $3,000 remaining unpaid as aforesaid.

And your orator shows that all the said payments of interest and part of the principal were acknowledged in writing on the back and across the face of said notes, at the respective dates at which they were made, and several of said written acknowledgments, viz: those made on the 28th March, 1868, on the 6th April, 1871, on the 18th April, 1873, on the 11th April, 1874, and on the 31st March, 1875, were subscribed by the said W. H. Cook to attest the correctness of the credits thus admitted, as will more fully appear by the credits and signatures on the back and face of said notes, which, as aforestated, are annexed hereto

9 as Exhibits B and C (and transcribed on pages of this transcript.)

And your orator shows and charges that at no time since the passing of said notes has the debt due thereon been in any manner [illegible] barred by the statute of prescription or limitations of the State of Louisiana, but that said notes as shown by the payments of interest and part of the principal as aforesaid have been kept alive, and are now valid, subsisting, and binding obligations of the said William Henry Cook for the balance due thereon as aforestated.

Your orator further showeth that said act of mortgage of the 28th March, 1868, was duly inscribed in the office of the recorder of mortgages for the parish of Orleans on the 27th March, 1868, and was duly inscribed therein on the 28th March, 1873, as will appear by reference to the certificate of said recorder endorsed on Exhibit A, hereto annexed.

(Transcribed on page of this transcript.)

10 And your orator further showeth that of the ten notes above described secured by the said mortgage act, eight have been paid and extinguished, so that of said series there remains due and unpaid only the two notes held as aforesaid by your orator, which two notes are hereto annexed as Exhibits B. & C. (Transcribed on pages of this transcript.)

And your orator alleges and says that the neglect and refusal of the said William Henry Cook to pay the amount due on said two notes is contrary to equity and good conscience, and tends to the manifest wrong and injury of your orator in the premises.

In consideration of all which, and forasmuch as your orator can only have adequate relief in the premises in this honorable court, where matters of this nature are properly cognizable and cognizable, your orator prays that the real property hereinbefore described, [illegible] pledged for the payment of the said debt due by the said

11 [illegible] and that out of the proceeds of the sale thereof there may be paid to your orator the sums due him as aforesaid, with the mortgage on said property, viz, the sum of five thousand dollars,

interest thereon at the rate of eight per cent. per annum from the 29th March, 1875, until paid; five per cent. on the aggregate amount of said principal sum and interest for attorneys or counsel fees, together with all costs and charges by your orator in this behalf sustained, and that your orator may have such further or other relief in the premises as the nature of the circumstances of this case may require and to this honorable court shall seem meet.

And may it please your honors to grant unto your orator a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said William Henry Cook, defendant, commanding him on a day certain, therein to be named,
12 and under a certain penalty to be and appear in this honorable court, then and there to answer all and singular the premises, and to stand to, perform and abide such further order, direction, and decree as may be made against him; and your orator, as in duty bound, will ever pray, &c.

(Signed) C. E. SCHMIDT,
Solicitor for Complainant.
SEMMES & MOTT,
Of Counsel.

(Signed)

Exhibit A.—Filed with bill.

13 Exhibit A.—Filed with bill January 11th, 1877.

STATE OF LOUISIANA,
City of New Orleans:

Before me, Pierre Charles Cuvillier, notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in the presence of the witnesses hereinafter named and undersigned, this day personally appeared William Henry Cook, a resident of this city, who declared and acknowledged that he is justly and truly indebted unto Bernard Soulié, also of this city, in the full amount and sum of eleven thousand one hundred dollars, lawful money by the said B. Soulié loaned to the said W. H. Cook, who, in liquidation thereof, has furnished ten promissory notes, dated this day made by him to his own order and by himself endorsed, all bearing interest in case of non-payment at maturity at the rate of eight per cent. per annum thereafter until paid. Five of said notes are made payable one year after date, and respectively for the following amounts, viz, one hundred and thirty-seven dollars and fifty cents, one hundred and ten dollars, one hundred and sixty-five dollars, eighty-two dollars and fifty cents, & fifty-five dollars; the other five are made payable two years after date, and respectively for the
14 following amounts, viz, twenty-six hundred and thirty-seven dollars and fifty cents, twenty-one hundred and ten dollars, thirty-one hundred and sixty-five dollars, one thousand five hundred and eighty-two dollars and fifty cents, and one thousand and fifty-five dollars. All of which notes have been paraphed ne varietur by me the said notary in order to identify them herewith, and were delivered to the said Bernard Soulié who acknowledges the receipt thereof, being here present. And the said W'm H. Cook agrees and binds himself to pay the fees of the attorney-at-law who may be employed for the purpose of instituting judicial proceedings for the recovery of the amount of the said notes or any part thereof when due; which fees are fixed at five per cent. on the amount sued for.

Now, in order to secure the punctual payment of the said notes at

maturity, together with all eventual interest, costs, and attorneys' fees which may accrue thereon, the said William Henry Cook declares that he does hereby specially mortgage in favor of the said Bernard ... who accepts the same for himself and to enure to the use of any ... holder or holders of the said notes the following-described property, to wit:

15 A certain portion of ground, together with the buildings and improvements thereon, the rights, ways, privileges, servitudes and appurtenances thereunto belonging, situate in the first district of this city, in the square bounded by Race, Constance, Annunciation, and Robin streets, measuring in French measure one hundred and twenty feet front on said Race street by one hundred and fifty feet in depth between parallel lines, and in American measure 127 feet 10 inches 4 lines front by 159 feet 10 inches 3 lines in depth, more or less; said portion of ground being composed of, 1st, lot No. twelve of square No. 41 of suburb Lacourse, acquired by said Cook at sheriff's sale in the suit of A. & A. Mercier vs. J. F. Canonge, in the succession of Jean Mercier, as per deed of the sheriff of the parish of Orleans, dated 27th July, 1844, recorded in the late register of wills' office, in book R., folio 185, et seq., &c.; 2nd, of lot No. six on a plan of E. Gottheil, dated ... May, 1849, deposited in A. R. Bienvenu's office as plan No. 5, acquired by said Cook from Mrs. J. R. G. Chase, per act before said notary Bienvenu, dated 8th of April, 1850; and 3rd, of lot No. five on the same plan, acquired by the said Cook from F. W. Fulmer, per act before the same notary, dated 11th of May, 1850.

16 And the said Wm. H. Cook binds himself and his heirs not to alienate nor incumber the said mortgaged property to the prejudice of this act, which shall bear confession of judgment in favor of any holder or holders of the above-described notes and entitle them, in default of punctual payment, to cause the said property to be seized under executory process and sold for cash to the highest bidder without appraisement, the said mortgagor waiving and renouncing the benefit of all laws relative to the appraisement of property seized and sold under executory or other legal process. Furthermore the said mortgagor binds himself to keep the buildings on the said property constantly insured against the risk of loss by fire to an amount not less than ... thousand dollars, and to transfer the policies of insurance to the said mortgagee for his use or that of any holder or holders of said notes until final payment, agreeing that in case he should fail to effect or renew such insurance such holder or holders may do so, and the reimbursement of all premiums paid for that purpose shall be secured by mortgage and privilege on said property, but in no case can such holder or holders be made responsible for any loss or damage resulting from non-insurance of said buildings.

17 By reference to the hereto annexed certificate from the office of mortgages in the city, it will appear that said property is free and clear of incumbrance in said mortgagor's name, except that one he granted by act passed before A. Brocard, notary public, on the 15th January, 1851, in favor of S. S. Green to secure ten thousand dollars with interest, costs, fees, &c., and the privilege to secure the drainage tax on said property.

And now personally appeared and intervened herein Samuel S. Green, who declared that he hereby releases and authorizes the cancelling of the mortgage granted in his favor on the above described property per act before A. Brocard, notary, dated 15th January, 1851, to secure two notes of five thousand dollars each, dated 15th January, 1851, payable one

year after date, with eventual interest at 8% per annum. Said notes, drawn by said Wm. H. Cook to his own order and by him endorsed, have been exhibited to me, notary, and by me duly cancelled and defaced.

Now to these presents personally intervened and appeared Mrs. Mary Caroline Hubbard, of lawful age, the wife of said Wm. Hy. Cook, who having had the foregoing act read and explained to her, declares that she approves the same, and desires to release the property above described from the matrimonial, dotal, paraphernal and other
18 rights, and from any claims, mortgages, or other privileges to which she is or may be entitled, whether by virtue of her marriage with her said husband or otherwise.

Whereupon I, the said notary, did inform the said Mrs. Cook, apart and out of the presence and hearing of her said husband, and before receiving her signature, that she had by law a legal mortgage on the property of said husband.

Firstly. For the restitution of her dowry, and for the reinvestment of the dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage.

Secondly. For the restitution and investment of the dotal property by her acquired since marriage, whether by succession or donation, from the day the succession was opened or the donation perfected.

Thirdly. For nuptual presents.

Fourthly. For debts by her contracted with her said husband.

Fifthly. For the amount of her paraphernal properly alienated by her and received by her said husband or otherwise disposed of for the individual interest of her said husband.

And the said wife did thereupon declare unto me, the said notary, that she was fully aware of and acquainted with the nature and
19 extent of the matrimonial, dotal, paraphernal and other rights and privileges thus secured to her by the second section of an act passed by the legislature of the State of Louisiana, authorizing wives to make valid renunciations, &c., approved on the fifteenth day of March, eighteen hundred and fifty-five; she nevertheless, did persist in her intention of renouncing, not only all the rights, claims and privileges hereinbefore enumerated and described, but all others of any kind of nature whatever to which she is or may be entitled by any laws now or heretofore in force in the State of Louisiana.

And the said Wm. H. Cook being now against present, and authorizing his said wife in the execution of these presents, she, the said wife, did again declare that she did and doth hereby make a formal renunciation and relinquishment of all her said matrimonial, dotal, paraphernal and other rights, claims, and privileges in favor of said mortgage, on the above described property, binding herself and her heirs, at all times, to sustain and acknowledge the validity of this recommendation.

Thus done and passed in my office, at in the presence of Antoine Cowand and Anatole Ker, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names, together with the said

20 parties and me, the said notary, on this twenty-sixth day of [illegible] in the year of our Lord one thousand eight hundred and sixty-two.

(Original signed) W. H. COOK.
MARY C. COOK.
BERN'D SOULIE.
SAM'L S. GREEN.
A. COWAND.
ART. KER.
P. CH'S CUVILLIER, *Not. Pub.*

NEW ORLEANS, 26th *March*, 1862.

A true copy.
(Signed) P. CH'S CUVELLIER,
Not. Pub.

(Endorsed:)

I, the undersigned, d'y recorder of mortgages for this city & parish of Orleans, State of Louisiana, do hereby certify that the within act of mortgage has been duly recorded in book of this office No. 73, fo. [illegible] on the 27th March, 1862, & reinscribed in book 94, fo. 24, of same office on 26th March, 1872.

New Orleans, January eleventh, 1877.
(Signed) C. DARCANTEL, *D'y M.*

Exhibit B.—Filed with bill January 11*th*, 1877.

$2,110.00] NEW ORLEANS, *March* 26*th*, 1862.

Two years after date I promise to pay to the order of myself twenty-one hundred and ten ... dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Across the face:)
No variatur.
New Orleans, March 26th, 1862.
(Signed) CH'S CUVELLIER,
Not. Pub.

(Across the face:)
Received one hundred & ten dollars on account of the within. Interest paid to 29 March, 1875.
New Orleans, 31st March, 1875.
(Signed) W. H. COOK.

[Two 10 dollars int. rev. stamp affixed & cancelled.]

21 No. —. Due 26-29 M'ch, '64.
(Signed) W. H. COOK.

(Endorsed:)
Interest paid to 26th March, 1865, New Orleans, 11 Oct., '64.
Interest paid to 26th instant, New Orleans, 30th March, 1867.
Interest paid to 26th inst., New Orleans, 29th March, 1868.
(Signed) W. H. COOK.
Interest paid to 26th March inst., New Orleans, 30th March, 1869.
(Signed) W. H. COOK.
Interest paid to 26th March, 1870, New Orleans, 11th April, 1870.
Interest paid to 26-29 March, 1871, New Orleans, 6 April, 1871.

Interest paid to 26th March, 1872, New Orleans, 18th April, 1872.

(Signed) W. H. COOK.

Interest paid to 26th March, 1873, New Orleans, 25th June, 1873.
Interest paid to 26th March, 1874, New Orleans, 11th April, 1874.
(Signed) W. H. COOK.

Exhibit C.—Filed with bill Jan'y 11th, 1878.

$3,165.00.] NEW ORLEANS, *March 21st*, 1862.

22 Two years after date, I promise to pay to the order of myself thirty-one hundred and sixty-five dollars, value received, with interest at the rate of eight per. cent. per annum from maturity until paid.

No.—. Due.
(Signed) W. H. COOK.

(Across the face:)
No varietur.
New Orleans, March 26th, 1862.
(Signed) P. CH'S CUVELLIER,
Not. Pub.

(Across the face:)
Received one hundred & sixty-five dollars on account of the within note. Interest paid to the 29 March, 1875.
New Orleans, 31 March, 1875.
(Signed) W. H. COOK.

Interest paid to 26th March, 1865, New Orleans, 11th October, 1864.
Interest paid to 26th March, 1867, N. Orls., 30th March, 1867.
Interest paid to 26th instant, New Orleans, 29th March, 1868.
(Signed) W. H. COOK.

Interest paid to 26th inst., New Orleans, 29th March.
(Signed) W. H. COOK.

Interest paid to 26th March, 1870, New Orleans, 11th April, 1870.
Interest paid to 26–29 March, 1871, New Orleans, 6 April, 1871.
(Signed) W. H. COOK.

Interest paid to 26th March, 1872, New Orleans, 18th April, 1872.
(Signed) W. H. COOK.

Interest paid to 26th March, 1873, New Orleans, 25th June, 1873.
Interest paid to 26th March, 1874, New Orleans, 11th April, 1874.
(Signed) W. H. COOK.

23 *Subpœna in chancery to defendant.—Issued January 11th, 1877.*

UNITED STATES OF AMERICA:

The President of the United States to the marshal of the district of Louisiana, greeting:

You are hereby commanded to summon William Henry Cook, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of February, 1877, then and

there to answer a bill in chancery filed against him, wherein [illegible] Lillo, a subject of the King of Spain, is complainant, and said Wm. Henry Cook is defendant.

Herein fail not, and have you then and there this writ, with your endorsement how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 11th day of January, in the year of our Lord one thousand eight hundred and seventy-seven, and the 101st year of American Independence.

24 [SEAL.] (Signed) F. B. VINOT, *Dy Clk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of February, 1877, otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT, *Dy Clk.*

Marshal's return.

Received Jan'y 11th, 1877, by the U. S. marshal, and on same day month, and year served a copy of within subpœna in chancery on William Henry Cook named herein, by handing the same to him in person.

New Orleans, Jan'y 13th, 1877.

(Signed) S. W. REED, *Dy Marshal.*

Entry at rules.—Extract from chancery-order book.—February rules, 1877.

MONDAY, *February* 5th, 1877.

CHARLES LILLO
vs.
WM. HENRY COOK. } No. 3966.

25 The defendant herein, by his solicitors, Singleton and Browne, has this day entered his appearance to the complainant's bill.

Answer.—Filed March 10th, 1877.

In the circuit court of the United States, district of Louisiana. In chancery.

CHARLES LILLO,
vs.
WILLIAM HENRY COOK. } No. 3966.

The answer of William Henry Cook, the defendant in the bill filed by Charles Lillo against him in the court aforesaid.

The said defendant reserving to himself all benefit of exception to the bill of the said plaintiff, for answer thereto says:

That it is true, as stated in the bill, that this defendant made his two promissory notes for twenty-one hundred and ten dollars, and thirty-one hundred and sixty-five dollars, dated at New Orleans, 8th March, 1862, and payable to his own order, and by him endorsed, with interest at the rate of eight per cent. per annum until paid, from their maturity, and that these notes, with a number of others, were made and passed to R. & A. Heath, as representing a sum of

26 eleven thousand and one hundred dollars of the same [illegible]

wit, the 26th March, 1862, and that the same were secured by mortgage, but this respondent does not admit that the transaction created a debt between the parties, or that the said plaintiff is authorized to collect the amount of said demands in his said bill.

This respondent avers that at the date of said transaction there was an existing war in the United States between the Confederate States, so called, and the United States, and had been for ten months and upwards, and that the United States had established a blockade of the port of New Orleans, and was prepared with a fleet of vessels and a large army to accomplish the conquest of the city of New Orleans, which was at the time in the possession of the Confederate Government, and was in a condition of insurrection against the United States, and was conducting and carrying on a war against the United States.

This respondent states that the Confederate States, so called,
27 for the purpose of conducting the war aforesaid against the United States, caused to be emitted certain bills of credit, in the name of the Confederate States, which promised to pay the money therein specified to the bearer two years after peace was made with the United States, by a treaty duly ratified between the belligerents. These notes were circulated by the said Confederate States to purchase munitions of war, to maintain an army and navy, and to carry on the war with the United States.

There was no redemption of the same provided or promised, unless upon the successful termination of the war, and every holder of the same became interested to aid and abet the Confederate States in the undertaking. This respondent says that the said B. & A. Soulié freely bought and sold and loaned this sort of currency, and aided in its circulation, and contributed to give it currency, intending to sustain thereby the said Confederate States. This respondent states that the only consideration of said notes, and of the mortgage mentioned in the bill, was a loan of Confederate notes of the issue of the Confed-
28 erate States of the effect aforesaid. That at the date of said transaction, the same were depreciated so as to be some sixty per cent. or more below par, and were only maintained in circulation by the power and authority of the insurrectionary States, by whom they were issued, solely to maintain their insurrection. This respondent says they were bills of credit prohibited by the Constitution of the United States, and were securities prohibited by the code, constitution, and statutes of the State of Louisiana.

This respondent does not admit that the plaintiff has any interest in the notes and mortgage described in the bill, and insists that if he has any such interest, he acquired the same long after the notes became due and payable by the terms of the same, and that he had notice of all of the facts connected therewith, and is bound by all of the defences which this respondent can present against them in the same manner as if the said B. & A. Soulié still held them.

This respondent says that the said Confederate notes ceased to circulate at all in New Orleans in or about the latter part of April,
29 1862, and that the same never have been redeemed by the Confederate States, or any of them, and at all times were an illegal issue, and contrary to the peace and order of the State of Louisiana.

This respondent further avers that he has paid on the contract with the said B. & A. Soulié a much larger sum than (was properly due at any time) the original notes called for, having paid the said B. & A. Soulié the sum of sixteen thousand seven hundred and twenty-seven 55/100 dollars, in lawful currency of the United States. That in the Con-

federate States there was no coinage of any description, [illegible] foreign commerce and no standards of value. The only [illegible] had consisted in these bills of credit. These varied continuously [illegible] they ceased to have any circulation. The value of the said bills at [illegible] tarity of the notes described in the bill of plaintiff as compared [illegible] gold coin was from thirty-five to forty dollars of bills for one dollar [illegible] coin, and that it was the contract of parties dealing in it that payments should be made in the same currency. This respondent avers

30 that when the said transaction took place both he and the said B. & A. Soulié resided in New Orleans, and were under the dominion of the Confederate power, and that all contracts had reference to the usage and practices of persons residing within the Confederate lines.

This respondent insists that the payments already made by him have more than compensated the said B. & A. Soulié, and have extinguished the said notes.

This defendant denies that the payments have been duly or legally applied on said notes. The said B. & A. Soulié have made usurious and illegal charges of interest and have appropriated, sometimes, money in discharge, claiming ten and twelve per cent. of interest contrary to the terms of the written contract, and contrary to the laws of the State, and against equity and good conscience.

In case any decree is made, this defendant claims a reference and a statement of accounts and asks the benefit of the statutes relative to the calculation of interest.

31 This respondent pleads the prescription of ten, five, *years* and three years upon the claims of the said plaintiff, and having fully answered prays to be dismissed with his costs to be charged against the said plaintiff, and which he has been wrongfully exposed to by the complainant.

(Signed) SINGLETON & BROWNE,
Solicitors.

(Signed) JOHN A. CAMPBELL,
Of Counsel.

(Signed) W. H. COOK.

Sworn to and subscribed by W. H. Cook, before me, this 10th March, 1877.

(Signed) F. B. VINOT,
U. S. Comm'r.

Entry at rules.—Extract from chancery order-book, March 10th, 1877.

CHARLES LILLO
vs.
WM. HENRY COOK. } No. 3066.

The defendant herein has this day, by his solicitors, Singleton and Brown and J. A. Campbell, filed his answer to complainant's bill.

32 *Entry at rules.—Extract from chancery order-book, April 2d, 1877.*

CHARLES LILLO
vs.
WM. HENRY COOK. } No. 3066.

The complainant herein has this day, by his solicitors, Semmes and

Mott and Chas. E. Schmidt, filed his replication to the answer of the defendant.

Replication.—Filed April 2d, 1877.

In the circuit court of the U. S., dist. of La.

CHARLES LILLO
vs. } No. 3066.
WM. HENRY COOK.

The replication of Charles Lillo, the plaintiff, to the demurrer of Wm. Henry Cook, defendant.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto saith, that his bill is true and the answer of the defendant is not true as therein set forth, and this he is ready
33 to prove.

(Signed) SEMMES & MOTT & C. E. SCHMIDT,
Sol's for Pff.

Motion & order appointing J. W. Gurley, jr., special examiner.—Entered and filed April 5th, 1877.

In the circuit court of the U. S., dist. of La.

CHARLES LILLO
vs. } No. 3066.
WM. HENRY COOK.

On motion of Semmes and Mott and Chas. E. Schmidt, sol's for pPff, and on suggesting that the pPff has filed his replication to the answer of the defendant, it is ordered that J. Ward Gurley, jr., be appointed examiner, to take the testimony to be adduced orally, and to make due report and return thereof.

Agreement to extend time for taking testimony.—Filed June 4th, 1877.

U. S. circuit court, dist. of La. In equity.

CHARLES LILLO
vs. } No. 3066.
WM. H. COOK.

34 It is hereby agreed that the time for taking testimony herein shall be extended for thirty days from date.

New Orleans, June 2d, 1877.

(Signed) C. E. SCHMIDT,
Solicitor for Complainant.

(Signed) SINGLETON & BROWNE,
Solicitors for Def't.

Motion for further time to take testimony.—Entered & filed November 29th, 1877.

U. S. circuit court, district of Louisiana.

CHARLES LILLO
vs. } No. 3066.
WM. HENRY COOK.

On motion of Singleton & Browne, solicitors for defendant herein, and upon suggesting to the court that the time for taking testimony in this cause having expired; but it having transpired that the testimony of witnesses now residing in Paris, France, is necessary to the defence in this cause, it is ordered that further time for taking testimony on behalf of the defendant be granted, to wit, for forty days.

Entry at rules.—Extract from chancery order-book of January 7th, 1878.

CHARLES LILLO
versus } No. 3066.
35 WM. HENRY COOK.

The parties in interest in this case are hereby notified that J. Ward Gurley, jr., special examiner appointed in this case, and to whom the same was referred, has this day filed his report.

Report and return of special examiner J. Ward Gurley, jr.—Filed January 7th, 1878.

In the circuit court of the United States for the 5th circuit and district of Louisiana.

CHARLES LILLO
vs. } No. 3066.
WM. HENRY COOK.

Report & return of sp'l examiner.

To the hon. the judges of said court:

The undersigned, who was appointed special examiner herein upon the 5th day of April, 1877, respectfully reports: That the parties in interest have from time to time appeared before him, and offered such testimony and evidence as they desired, and closed the examination on the 29th December, 1877. All the testimony taken and exhibits
36 offered before the sp'l examiner are herewith returned into court, together with the minutes of the proceedings had before him, from which will appear all necessary details and particulars.

Very respectfully submitted.

(Signed) J. WARD GURLEY, Jr.,
Sp'l Examiner.

N. O., La., *Jan'y 6*, 1878.

Minutes of proceedings before J. W. Gurley, special examiner.—Filed January 7th, 1878.

In the circuit court of the United States for the fifth circuit and district of Louisiana.

CHARLES LILLO
vs.
WM. HENRY COOK. } No. 8066.

At New Orleans, La., this 27th day of June, 1877, before J. Ward Gurley, jr., special examiner, as per order of reference herein made, appeared Thomas J. Semmes, esq., & Chas. E. Schmidt, esq., for complainant, R. H. Brown, esq., for def't, and the following witnesses, viz, Wm. Henry Cook, August Monteroy, H. R. Giffney, and T. A.
37 Gaetan, who, being each first duly sworn to tell the truth, the whole truth, and nothing but the truth, relative to the matters and things under examination, did each depose and testify as herewith returned into court. The testimony being taken down in short hand by H. Langford, stenographer, in my presence, and consists of 19 pages. And after the taking of said testimony and the offering of the exhibits therein mentioned, the examination was adjourned at request of counsel.

Attest:

(Signed) J. WARD GURLEY, JR.,
Sp'l Examiner.

Letter from C. E. Schmidt.—Filed by sp'l examiner.

FRIEND BROWNE: I have just communicated to Semmes your request to leave the Lillo vs. Cook case open for further testimony until November. Semmes answers, "I insist upon closing the testimony as agreed on." So I must now ask that you fix the time at which we shall proceed to take the balance of your evidence.

Yours truly,

(Signed) C. E. SCHMIDT.

38 On reflection, to oblige Mr. Browne, I am willing to leave the case open for testimony on either side until 15th Nov., 1877, if you concur.

(Signed) SEMMES.

I consent.

(Signed) C. E. SCHMIDT.

U. S. circuit court for 5th circuit and dist. of La.

CHARLES LILLO
vs.
WM. HENRY COOK. } No. 8066.

At New Orleans, La., this 14th day of November, A. D. 1877, before J. Ward Gurley, jr., sp'l examiner herein, at his office No. 47 Camp st., pursuant to agreement of counsel, appeared Thos. J. Semmes, esq., & Chas. E. Schmidt, esq., for compl't; R. H. Browne, esq., for defendant, and the following witnesses, viz: Wm. Henry Cook recalled

and Walter C. Cook, who, being each first duly sworn to tell the whole truth, and nothing but the truth relative to the matters and things under examination, did each depose and testify as follows,
39 which returned into court.

The testimony being taken down in short hand by H. Langford, stenographer, in my presence, and consists of 11 pages.

And thereupon the examination was adjourned to the 16th Nov., 1877, at 10 a. m., by agreement of counsel.

Attest:

(Signed) J. WARD GURLEY, Jr.,
Spl. Examiner.

At New Orleans, La., this 16th day of November, 1877, at 10 a. m., before J. Ward Gurley, sp'l examiner. Pursuant to adjournment appeared Thos. J. Semmes, esq., Chas. E. Schmidt, esq., for complainant, R. H. Browne, es', for defendant, and the following witness, viz: Henry Bacas, who, being duly sworn to tell the truth, the whole truth, and nothing but the truth relative to the matters and things under examination, did depose and testify, as is herewith returned to the
40 court. The testimony being taken down in short hand by H. Langford, stenographer, in my presence, and consists of 12 pages.

And thereupon the further examination was adjourned. Counsel for complainant giving notice that they require the sp'l examiner to return the evidence into court as the time for taking testimony was expired.

And counsel for defendant gave notice that he would at once apply to the court for an extension of the time allowed to take evidence.

Attest.

J. WARD GURLEY, Jr.,
Sp'l Examiner.

U. S. circuit court, district of La. In equity.

CHARLES LILLO
vs. } No. 3066.
WM. H. COOK.

It is hereby admitted that Eulalie and Louise Soulié and B. Soulié, mentioned in the testimony of Henry Bacas, taken in this cause, were and are now citizens of the State of Louisiana.

New Orleans, La., Dec. 28, '77.

(Signed) C. E. SCHMIDT,
Solicitor for Complainant.

U. S. circuit court for 5th circuit and district of La.

41 CHARLES LILLO
vs. } No. 3066.
WM. HENRY COOK.

At New Orleans, Louisiana, this 29th day of December, A. D. 1877, before J. Ward Gurley, jr., special examiner herein. Pursuant to the order extending the time for taking evidence appeared R. H. Browne, esq., counsel for defendant, who offered in evidence the attached publication on the part of counsel for complainant.

And Mr. Browne further informed the sp'l examiner that it is agreed between counsel that the record of the case of W. H. Cook vs. Henry

Bros. & F. J. Heron, recorder, &c., was to be considered as offered in evidence, subject to the objections which counsel for complainant would present to the court.

And thereupon counsel for defendant closed his case, and subsequently Mr. Schmidt called upon the special examiner, and declared the
42 case closed on the part of complainant.

Attest:

(Signed) J. WARD GURLEY, JR.,
Sp'l Examiner.

Petition in case No. 7837 of the fifth district court, parish of Orleans, State of Louisiana.—Filed in said court Dec'r 29th, 1876.

WM. H. COOK
vs.
RACAS BROS. & FRANK J. HERRON, RECORDER of mortgages. } No. 7837.

To the hon. the judges of the fifth district court for the parish of Orleans.

The petition of William H. Cook, a resident of the city of New Orleans, respectfully shows:

That on the 26th March, 1862, he executed before P. Chas. Cavelier, notary public, an act of mortgage in favor of Bernard Soulie, then a resident of New Orleans, for the sum of eleven thousand and one hundred dollars, on the following described property belonging to petitioner, to wit:

A certain portion of ground with all the improvements thereon
43 situated in the square bounded by Race, Annunciation, Constance, and Robin streets, in the first district of this city, measuring one hundred and twenty feet front on Race street by a depth of one hundred and fifty feet between parallel lines.

That as an evidence of the indebtedness of your petitioner to said Soulie in said sum of eleven thousand and one hundred dollars, your petitioner executed and delivered to said Soulié his ten certain promissory notes, all dated the 26th March, 1862, drawn by your petitioner to his own order, and by him endorsed, five of said notes being for the following sums respectively: $2,637, $2,110, $1,582.50, and $1,055, and all are payable two years after date with eight per cent. per annum interest after maturity, and the other five of said notes being for the following sums respectively: $137.50, $110, $165, $82.50, and $55, and all are payable one year after date, with eight per cent. per annum interest after maturity.

That all of said ten notes were paraphed ne varietur by said notary
44 to identify the same with the said act of mortgage, and the payment of the same, with all eventual interest, were secured by said special mortgage and privilege on the property herein described. All of which will more fully appear by reference to the act of mortgage, a duly certified copy of which is hereto annexed and made a part of this petition.

Your petitioner further shows that the said act of mortgage was duly recorded in the mortgage office in and for the parish of Orleans, on the 27th day of March, 1862, book 78, folio 143, and duly reinscribed therein on the 26th March, 1872, book 94, folio 24, and still remains a mortgage upon your petitioner's said property. All of which will more fully appear by reference to the certificate of the recorder of mortgages, dated December 12, 1876, and filed herewith.

[illegible] and void, the same being [illegible] defendants money.

45 Your petitioner further shows that he [illegible] with a large amount of interest, except the two [illegible] two thousand one hundred and ten dollars, and one for [illegible] one hundred and sixty-five dollars, both payable two years [illegible] and bearing eight per cent. interest after maturity.

That said Bernard Soulie now resides in a foreign country, to [illegible] France, and the said notes are now in the possession and [illegible] Bros. (a firm composed of Henry Bacon and Paul Bacon) of this [illegible] claiming to act as the agents of said Soulie.

That your petitioner is entitled to the possession of said notes, and to have the same cancelled and annulled and the mortgage thereof.

That your petitioner has demanded of said Bacon Bros. the delivery of said notes, but they declined to deliver them to him.

That your petitioner is afraid and fears that said Bacon Bros., agents of Bernard Soulie, will part with, conceal, or dispose of said notes during the pendency of this suit.

Wherefore your petitioner prays, the [illegible] premises considered, that a writ of sequestration [illegible]

46 herein, directing the civil sheriff, Thomas H. Handy, to [illegible] and take into his possession the said two mortgage notes, [illegible] New Orleans, La., March 26, 1862, one for the sum of $1,[illegible] either for the sum of thirty-one hundred and sixty-five [illegible] drawn by your petitioner, and by him endorsed, and payable [illegible] after date, with eight per cent. per annum interest after [illegible] both principal as variatur, New Orleans, March 26, 1862, by [illegible] Chevalier, notary public. And that Bacon Bros., agents of [illegible] F. J. , recorder of mortgages, be cited to appear [illegible] swer this petition; and that after due proceedings, your petitioner have and recover judgment against Bacon Bros., agents, &c., for the possession of the said two mortgage notes described as aforesaid; and the same be decreed to be cancelled and annulled as the [illegible] the consideration thereof was illegal, null, and void.

47 And for a further decree as against , recorder of mortgages, declaring that the said recordation of said [illegible] decreed null and void and of no effect, and directing him to [illegible] cancel the same from the books of his office.

And your petitioner prays for all such further order and relief in the premises as may be requisite and proper, and for general relief.

(Signed) SINGLETON & BROWNE,
Att'ys for Pet'r.

W. H. Cook, being duly sworn, deposes and says that he is the [illegible] in the foregoing petition, and that all the facts therein set forth and allegations made are true and correct.

(Signed) W. H. COOK.

Sworn to and subscribed before me this 29th Dec'r, 1876.

(Signed) PAUL T. ABADIE,
Dy Clk.

Rec. 492—2

Let a sequestration issue as herein prayed, upon petitioner furnishing bond with good and solvent security, in the sum of one thousand dollars, conditioned as the law directs.

New Orleans, 27th Dec'r, 1876.

(Signed) E. NORTH CULLOM,
Judge.

Testimony for defendant.—Filed January 7th, 1878.

United States circuit court, fifth circuit. District of La. In equity.

CHARLES LILLO
vs.
WM. HENRY COOK. } No. 3065.

Testimony taken on behalf of defendant before J. W. Gurley, jr., United States commissioner, this 27th day of June, 1877.

Present, R. H. Browne, esq., for defendant; Thomas J. Semmes and C. Schmidt, esq., for complainant.

WM. HENRY COOK, defendant, being first sworn on his own behalf, doth testify.

By Mr. BROWNE:

Q. You are the defendant in the case of Lillo against Cook, United States circuit court?

A. Yes, sir.

Q. This suit is on a mortgage and notes, part of which appears to have been paid, and part not paid?

A. Yes, sir.

Q. Will you look at that document, marked A? Did you execute the mortgage of which this is a copy?

A. Yes, sir.

19 Q. I believe there were ten notes executed under that mortgage?

A. Yes, sir; ten notes.

Q. Who furnished the money under that mortgage? From whom did you obtain it?

A. From B. & A. Soulié.

Q. Where did they reside?

A. In New Orleans, on Bourbon street, No. 57 or 66.

Q. Look at that memorandum and see if that contains the amount of the notes.

A. Yes, sir; it does. That is in Mr. Soulié's handwriting.

(Mr. Browne, for the defendant, offers in evidence document marked B.)

Q. What was the consideration of that mortgage?

A. I received Confederate money for it.

Q. Did you receive it in a check, or money?

A. I received it in a check on the Bank of Louisiana.

Q. For how much?

A. $10,000 even.

Q. What date did you receive that check?

A. The 27 March, 1862.

Q. What did you do with that check?

A. As near as I can recollect, I deposited it.

Q. Whose check was it?

A. B. & A. Soulié's.

Q. What did you do with it?

51 A. I deposited it in the branch of the Louisiana State Bank that date.

Q. Have you any memorandum in Messrs. B. & A. Soulié's handwriting, or either of them, concerning this?

A. Yes, sir; that is what you handed me; that is his proposition to me for a loan dated 20th March.

Q. You say this is the memorandum?

A. That is the memorandum containing Mr. Soulié's proposition to make the loan in his handwriting. It is his proposition to me and my acceptance.

(Mr. Browne, for defendant, offers in evidence memorandum marked C.)

Q. Identify this statement marked D, and state if you got that from the journals therein stated.

A. Yes, sir; that contains a statement of the value of gold as reported in the Commercial Bulletin and the Daily Crescent on the dates set forth.

(Mr. Browne offers in evidence statement marked D.)

Q. I believe these are the two notes that are unpaid?

A. Yes, sir; on the 20th March, 1875, they were reduced from $5,000 to $5,000 by payment on that date. My remark applies to both notes B & C.

53 Q. Have you paid any of these notes, or made any payments on account of these notes, described in the mortgage suit?

A. Yes, sir.

Q. What notes have you paid? Look at these, and see if these are they.

A. Yes, sir; I paid all the notes, except the two in suit, B & C.

Q. And the interest?

A. And the interest.

Q. When did you make the respective payments; have you a memorandum?

A. Yes, sir; it is stated, the dates, on the paper which is now marked E.

Q. This paper contains the payments you have made and the dates on which they were made and the amounts?

A. Yes, sir; it amounts altogether to $16,727.83.

Q. You say it contains the amount of the notes when paid and the interest when paid?

A. Yes, sir.

Q. And the rate of interest charged?

A. No, sir.

Q. But the times at which the respective payments were made are stated?

A. Yes, sir.

Q. Have you any memoranda or receipts from B. & A. Soulié showing these respective amounts and the interest when paid?

A. Yes, sir.

Q. Look at these receipts, and state if they were given by B. & A. Soulié.

53 A. Yes, sir; part by Soulié and part by Bacon, a clerk of his.

Q. You made these payments accordingly?

A. Yes, sir.

Q. At the rates of interest as stated therein?

A. Yes, sir.

(Mr. Browne offers in evidence certain notes, ten in number, and marked F.)

Q. The payment of these notes and the interest were made in what currency?

A. United States currency, all of them.

Q. And these notes, the payment of which you refer to, are these notes mentioned in the mortgage the consideration of which you say was Confederate money?

A. Yes, sir.

Q. I observe that the interest charged there is five and a half per cent. of the original loan. Will you explain why it was at that rate?

A. I can explain the proposition made to me in Confederate money so as to get it out. The regular rate of interest was ten per cent. I don't know that there was anything said about the rate except five and a half per cent.

Q. Do you know what the value of Confederate currency was at the time these notes fell due?

A. I don't know.

Q. I mean at the time these notes fell due.

54 No, sir; I have no idea what it was worth.

Q. Were you here when the notes fell due?

A. Yes, sir; I was here.

Q. Was Confederate money in circulation here then?

A. No, sir.

(Mr. Browne, for defendant, offers in evidence notes marked G, 8 in number.)

Cross-examination by Mr. SCHMIDT:

Q. Have you examined the credits and extensions marked on the face and across the back of these two notes sued on? If you have, tell us whether they are correct.

A. I would have to compare it with the memorandum.

Q. Compare it?

A. Yes, sir.

Q. I ask you to examine the credits given on these two notes marked B & C, and tell us whether the credits for the interest paid and the payments on account of the principal are correct.

A. Yes, sir; they are correct. The amounts $110 and $165 reduced the notes from $5,275 to $5,000.

Q. Your signature appears at the foot of the amounts of these credits, or several of them, both on the back and on the face of the notes. Are these signatures purporting to be yours genuine; were they affixed at the time?

55 A. Yes, sir, they were affixed at the time; Mr. Bacas had the notes; these are all my signatures.

Q. As shown by the mortgage act A, there existed at the date of this loan from R. & A. Soulie to yourself, a mortgage upon your property described in said act, to wit: a mortgage granted by act passed before A. Brocas, notary public, on the 15th January, 1861, in favor of S. S. Green, to secure $10,000 with interest, costs, attorneys' fees, etc. Was not the holder of that mortgage pressing you for payment of his claim at that time?

A. These mortgage notes were paid before this loan was made; the notes for that appear so in the mortgage office; they appear only for the purpose that they were not cancelled; they were paid on the 21.

Q. How were they paid?

A. Paid by check, I suppose.

Q. With funds procured from whom?

A. From nobody; they were my own funds.

Q. You extinguished this $10,000 mortgage just on the eve of contracting this new loan and giving this mortgage to the Soulie?

A. Yes, sir; I paid them on the 24th, and being short of money I obtained another loan.

56 Q. In what sort of money did you pay these first notes?

A. I don't know; I gave a check.

Q. And the banks at that time were paying their checks in Confederate notes?

A. I think they were; there were no mortgage notes of mine out at that time.

Q. What was the idea of paying these notes and contracting an indebtedness of a like amount?

A. Because I did not wish to pay ten per cent., as I was on those notes, when I could obtain money for five and a half; four and a half was worth saving, and that was the reason; I was informed by [illegible] that on the 20th I could obtain a loan on five and a half; I accordingly paid this $10,000 that I obtained at ten per cent., and obtained the loan from Soulié at five and a half, thereby saving four and a half, that was my object.

Q. This loan of $10,000 that you paid by your check on the bank on the 24th, that had been contracted prior to the issue of any Confederate currency, January, 1861?

A. Yes, sir; that was before the Confederacy.

By Mr. BROWNE:

Q. Under what circumstances were these extensions made on these two notes in suit?

57 Q. There was no circumstances at all about it that I know of.

A. Were you threatened with foreclosure, or anything of that kind?

A. No, sir.

AUGUST MONTEROY, sworn and examined for defendant, says:

By Mr. BROWNE:

Q. You were the cashier of the Bank of Louisiana in March, 1862?

A. Yes, sir.

Q. Have you had occasion to examine the account of R. & A. Soulié during the month of March, 1862, from the books of the bank?

A. Yes, sir; I was asked to do so, and I went to examine them in the office of Mr. Miltenberger, one of the assignees.

Q. Did R. & A. Soulié have any coin account with the Bank of Louisiana?

A. No, sir; I did not see anything on the books showing that they had a coin account.

Q. What was their currency?

A. Confederate money.

Q. Did you examine the debit side of R. & A. Soulié' account to find the amounts paid out?

A. I saw that on the 28th of March, 1862, there is a debit of $[illegible]

Q. With a check deposited in the State National Bank of [illegible]

58 time on the 27th of March, 1862, when would it have reached your bank?

A. The next day, the 28th.

Q. And you say B. & A. Soulié had no other account than a currency account, which currency was Confederate money?

A. Yes, sir.

H. R. GIFFNEY, a witness produced and sworn for the defendant, says:

I am connected with the New Orleans Price Current; I have been requested to examine the financial reports of the Price Current to see the relative price of gold for three weeks commencing March 15th, the 27th, and 29th. I found certain rates for gold taken from the statements furnished by Judson & Co., then bankers, to be seventy per cent. premium over Confederate currency; I was also requested to find the price of gold on March 25th, 1864; taken from the papers' financial report of greenbacks they were selling them at one hundred and sixty-five.' I understood the request was made to me with regard to this latter part, but I am mistaken. My idea was to get the value of gold as compared with greenbacks in 1864, but that is not wanted; it was Confederate money.

59 In the year 1864 I was present here in New Orleans; I sold what Confederate money I had for ten cents on the dollar in greenbacks. They were then considered contraband and their circulation prohibited.

T. A. GAETAN, sworn and examined for defendant, says:

In March, 1862, I was general bookkeeper in the Branch State Bank—Pike's old bank—in 1862; the currency was Confederate money. The banks were not allowed to deal in any other currency.

Attest.

(Signed) J. WARD GURLEY, JR.,
Sp'l Examiner.

60 United States circuit court, fifth circuit, dist. of La.

CHARLES LILLO
vs. } No.
WM. HENRY COOK.

Testimony taken on behalf of defendants before J. Ward Gurley, jr., special examiner, this 14th November, 1877. Present, R. H. Browne, esq., for defendant; Thomas J. Semmes & C. E. Schmidt, esqrs., for complainant.

WILLIAM HENRY COOK, a witness produced, sworn, and examined on behalf of defendant, deposes and says:

By Mr. BROWNE:

Q. These memoranda that I now hand you were marked F in your testimony when previously given; I want you to look and see if they are in the handwriting of B. & A. Soulier; state those which are theirs and which not, if there be any difference, ten of which are in your hand; whom are most of them made by?

A. B. & A. Soulier.

Q. Presented to you by one of the firm?

A. Presented to me by Mr. Soulier or by Mr. Bachus, [illegible]
of the 12th October, 1868. I paid to Soulier, O[illegible]
61 I paid that to Soulier, July 12, 1869, signed by [illegible]
dated the 20th March, 1867, I paid to Mr. Soulier. [illegible]
notices to come and pay, written by Mr. Soulier; no date to [illegible]
It is a notice under the 20th inst., but it does not [illegible]
a notice of the amount due. This of the 20th inst. was [illegible]
Bachus. The 20th March, 1870, is merely a notice of what is [illegible]
call that Mr. Soulier's handwriting. March 5, 1871, is a memorandum
the amount due, in Soulier's handwriting.

Q. Who always purported to hold these notes?

A. As far as I know, when the notes were presented to me, they
presented by Mr. Soulier or Mr. Bachus. They were always pre
by either one or the other of them.

Q. Here are some checks which purport to have been payments
notes or amounts of interest on these notes. Look at them and
to whom they were given.

A. This of March 28, 1868, I could not say; I think it was paid
Mr. Bachus; I would not be positive about it; he generally collected
the interest up at the office.

(Mr. Browne offers in evidence checks amounting to $1,[illegible]
$1,066.60, $536.29, $3,316.60, and $368.82.)

62 Q. Has any demand ever been made upon you by Lillo for
amount of these notes?

A. No, sir.

Q. You never heard of Lillo being the owner until the petition was
filed in this case?

A. I never knew it until it was presented in the petition to me, at my
house, with the notice to answer.

Q. When that debt was contracted in what currency did you contemplate
plate paying it?

A. I did not have any contemplated currency.

Q. Did you expect to pay it in greenbacks?

A. That never entered my mind. I expected to pay it in the currency
going when it was due; I could not sit down that time and think how
I should pay in any notes.

Q. What was the sole currency here then?

A. Confederate money; you mean when the notes were given?

Q. Yes.

A. Confederate money and no other.

Cross-examination by Mr. SCHURZ:

Q. I suppose you don't know the handwriting of Mr. Soulier or
Bachus, except what information you derived from these documents exhi
bited to you?

A. Yes, sir.

Q. You might have been mistaken?

A. Yes, sir.

63 Q. They are very similar?

A. Well, I think there is one that Soulier gave me in my office
once. He wrote it in my office. I would swear to that positively.
Soulier used to collect the interest himself.

Q. Those that were signed by B. & A. Soulier were by Mr. Soulier?

A. Yes, sir.

Q. And those by Bachus were by him?

A. Yes, sir.

Q. And the undersigned memorandum you only suppose to be theirs?

A. Yes, sir.

WALTER C. COOK, a witness, produced, sworn, and examined on behalf of defendant, says:

By Mr. BROWNE:

You are the son of Wm. H. Cook?

A. Yes, sir.

Q. State, if you know, anything with reference to these notes which are now sued on by Lillo against your father; did you ever make any settlement of any of these notes of which these are a part of the series; or did you make a demand for these notes? If so, state the whole circumstances as near as you can.

A. With regard to the settlement of them, I signed the checks
64 for payment, sometimes for the notes, and sometimes for a portion of them, but not all. That is, as far as any settlement I had with regard to signing the checks.

Q. Did you ever visit the office of Soulier with reference to these notes?

A. Yes, sir; I was at the office of B. & A. Soulier the 15th December last.

Q. What occurred, and whom did you see?

A. I saw Mr. Bachas; I don't know but one that was in the habit of coming to the office to collect the interest on the notes, and that is the one I saw.

Q. So his coming to the office to give receipts, as you say, whom did he pretend to represent?

A. He pretended to represent Mr. Soulier. Either he or Mr. Soulier always collected the interest.

Q. Did Soulier ever come there, to your personal knowledge?

A. Yes, sir; he came sometimes.

Q. Did you ever know Mr. Lillo as being the owner of these notes?

A. I never heard of him until this suit.

Q. How old were you when your father borrowed this money in 1862?

A. I was not quite nineteen. I would be nineteen the following August.

Q. Did you have anything to do with your father's business then?

A. Yes, sir; I was there keeping books and clerking for him.
65 Q. Do you anything yourself, of your own knowledge, of transaction and the money which formed the consideration of these notes?

A. I know received was a check given which was deposited to our account in the branch of the Louisiana State Bank where we kept our accounts at that time.

Q. What currency was in existence then?

A. Confederate money.

Q. Any other currency?

A. No, sir; I don't think there was anything current after September, 1861, but Confederate money.

After which the examination was adjourned to Friday the 16th November, at 10 o'clock a. m.

Examination on behalf of defendant resumed.

Present, R. H. Browne, esq., solicitor for defendant; Thomas Semmes & C. E. Schmidt, esq'rs, for complainant.

HENRY RAGAN, a witness produced, sworn, and examined on behalf of defendant, says:

By Mr. BROWNE.

Q. You have been for a long time the agent of B. & A. Soulier.

A. Three years, about.

66 Q. You had possession of these Cook notes as the agent of B. & A. Soulier?

A. Yes, sir; as agent.

Q. When did these notes leave your possession?

A. I cannot tell you, exactly, as to the time.

Q. Well, as near to the date as you can?

A. I could not tell you, exactly, but I think it was the latter part of 1876, as far as I can recollect.

Q. Into whose possession did they then go?

A. Into Mr. Schmidt's possession.

Q. Have you had any correspondence with B. & A. Soulier or either of them with reference to these notes?

A. Yes, sir; we sent a telegram to the owners of the notes, Eulalie and Louise Soulier, about that time, that the notes went out of our hands.

Q. What instructions did they give you?

A. They gave us no instructions.

(A telegram, the same referred to by the witness, is here produced by Mr. Schmidt, solicitor for complainant, and is now offered in evidence by Mr. Browne, solicitor for defendant, marked X.)

Q. That is the telegram you refer to as sending to them?

A. Yes, sir; that is a copy of the telegram.

Q. You did not receive any answer to that?

A. The answer was sent to Mr. Schmidt.

Q. You had the notes to this date, December 20th, 1878?

67 A. No, sir; they had been in Mr. Schmidt's hands a long time before that.

Q. How long?

A. I cannot tell exactly, two or three weeks maybe; my brother gave them to Mr. Schmidt.

Q. You know nothing of the transfer other than from that telegram marked X?

A. No, sir; the reply was given to Mr. Schmidt; I know nothing further about that transfer than that.

Q. Mr. Schmidt had long been the attorney of B. & A. Soulier?

A. Yes, sir.

Q. Mr. C. E. Schmidt, the solicitor present?

A. Yes, sir; this gentleman present.

Cross-examined by Mr. SEMMES:

Q. Do you know who was the owner of these notes in the year 1876 prior to these telegrams?

A. Yes, sir; Miss Eulilie and Miss Louise Soulier; here are the entries here.

Q. The notes were originally purchased for them for their account and with their money?

A. Yes, sir.

By Mr. SCHMIDT:

Q. You have stated that you hold these notes as the agent of B. & A. Soulier, and yet you say that the notes from the time they were made and when acquired by B. & A. Soulier were acquired by and paid for with the funds of Eulilia and Louise Soulier?

A. Yes, sir.

Q. Were not B. & A. Soulier, and subsequently Bernard, acting as the agents of many persons residing in Europe?

(Mr. Browne, solicitor for defendant, objects to the above question on the ground that we have B. & A. Soulier's individual receipts, in which they do not recognize themselves as agents in writing, and they cannot now by parole be heard to contradict these declarations that they were the owners of the notes at the time they were making these payments.)

A. We have the procuration of B. & A. Soulier.

Q. You were substituted to the powers of B. & A. Soulier with regard to their sisters Eulilia and Louise?

A. Yes, sir; and all his sisters and brothers and the successions of his late brothers.

Q. The question is whether or not B. & A. Soulier did not hold this paper as the agents of their sisters?

A. Yes, sir; the entry is there to prove it.

Q. How is it that you state that you hold these notes as the agent of B. & A. Soulier?

A. No, sir; as agent——

Q. As the agent of whom?

A. Of Miss Eulilia and Louise Soulier, by virtue of a power we hold as the substitutes of B. & A. Soulier.

Q. You have never held these notes for account of Bernard Soulier or the firm of B. & A. Soulier?

A. Never.

Q. Besides, has not Mr. Alban Soulier, the partner of Bernard, been dead a great many years?

A. Yes, sir.

Q. And the firm was dissolved by his death?

A. Yes, sir.

Q. When did Mr. Bernard Soulier cease to do business here himself, either for his own account or as the agent of other parties?

A. I think in May, 1875.

(Mr. Browne, solicitor for defendant, objects to all this testimony as contradicting the written statements of B. & A. Soulier themselves, and of the witness on the stand now, who, in writing, has stated that he was acting for B. & A. Soulier at the dates and long since.)

Q. Mr. Soulier has since resided in Paris, France?

A. Yes, sir.

Q. Who was entrusted in this city with the business of Bernard Soulier, and of this former firm of B. & A. Soulier, when Mr. Bernard Soulier retired?

A. Myself and my brother.

Q. To enable you to attend to that business, did Mr. Bernard Soulier substitute you to his powers to act as agents of the parties, or most of the parties, whom he represented here, who resided in Europe?

A. Yes, sir; by a special procuration.

(Mr. Browne, for defendants, calls for the procuration referred to.)

By Mr. Brownes, for defendant:

Q. You and your brother were partners together, acting in your capacity as agents, and have been for years, you and P. A. Bacon?

A. Outside of Mr. Soulier's business; yes, sir.

Q. That is your brother's handwriting?

A. Yes, sir.

(One of the memoranda of the F series is here presented to witness, which he identifies as being in the handwriting of P. A. Bacon, and his genuine signature, dated July 12, 1866; also from the series F, memorandum date March 28, 18 , B. & A. Soulier, per F. Bodet, containing the genuine signature of P. Bacon.)

Q. Was the power of attorney you spoke of a while ago to yourself and to your brother conjointly?

A. It was both conjointly and separately.

Q. From these parties?

A. Eulilia and Louise Soulier; when Mr. B. Soulier left New Orleans in May, 1875, he substituted us in his place as the agents of Eulilia and Louise Soulier, by virtue of a power of substitution given to
71 him by them, and subsequently these ladies ratified this substitution.

Q. Were these his sisters?

A. Yes, sir. We never signed for these ladies; we always signed for Soulier?

Q. I understood you to have said that these notes were taken originally, or rather with the investment of the money of Eulilia and Louise Soulier?

A. Yes, sir.

Q. I understood you to say so in your cross examination?

A. Yes, sir.

By Mr. Symmes:

Q. They always remained the property of these ladies with this transfer to the complainant Lillo?

A. Yes, sir.

Walter C. Cook recalled and examined on behalf of defendant.

By Mr. Browne:

Q. Did you have any conversation with Paul A. Bacon or Henry Bacon within the last twelve months, with reference to the ownership of these notes sued on?

A. Yes, sir.

Q. With which one?

A. P. A. Bacon, on or about the 15th December, 1876.

Q. Did he state to you who owned these notes?

72 A. I put the question to him, whether Mr. Soulier or Bacon Bros. were the owners of these notes of Cook, and he said Soulier was the owner of them, and they held them for him.

Attest:

(Signed) J. WARD GURLEY, Jr.,
Ass't Examiner.

73 *Thirty papers and vouchers offered in connection with testimony of def'ts and filed January 7th, 1878.*

No. . NEW ORLEANS, *M'ch* 28, 1868.

Bank of America pay to the order of B. & A. Soulie nineteen hundred & four $\frac{50}{100}$ doll'a.

($1,904 $\frac{50}{100}$.)

(Signed) WALTER C. COOK.

(Across the face:) Paid. 2-cent int. rev. stamp.

(Endorsed:) B. & A. Soulie.

No. . NEW ORLEANS, 29*th M'ch*, 1869.

Bank of America pay to the order of B. & A. Soulie one thousand & sixteen $\frac{66}{100}$ dollars.

($1,016.66.)

(Signed) WALTER C. COOK.

(Across the face:) Paid. 2-cent int. rev. stamp.

(Endorsed:) B. & A. Soulie, per P. A. Bacas.

No. . NEW ORLEANS, 20*th June*, 1873.

Canal Bank pay to the order of B. & A. Soulie twenty-three hundred and sixteen $\frac{66}{100}$ dollars.

$2,316.66.

(Signed) WALTER C. COOK & CO.

(Endorsed:) B. & A. Soulie, per P. A. Bacas.

No. . NEW ORLEANS, 30 *M'ch*, 1875.

Canal Bank pay to the order of B. Soulié five hundred and ninety-eight $\frac{82}{100}$ dollars.

$598.82.

(Signed) WALTER C. COOK & CO.

(Endorsed:) P. pro. B. Soulie. P. A. Bacas.

No. . NEW ORLEANS, *April* 11, 1874.

74 Canal Bank pay to the order of B. Soulie five hundred and thirty-six $\frac{20}{100}$ dollars.

$536.20.

(Signed) WALTER C. COOK & CO.

(Endorsed:) B. Soulie, per T. A. Bacas.

Document B.

		Notes at 1 year.	a. 2 years.
One note	2,500, int. 1 year 5½%	137 50	2,637 50
" "	2,000,	110	2,110
" "	3,000,	165	3,165
" "	1,500,	82 50	1,582 50
" "	1,000,	55	1,055
	10,000	550	10,550

5 notes am't'g to 10,550 at two years. } Dated March 26, 186
5 " " " 550 at one year. }

Document C.

A loan of $10,000, for two years at 5½ p'r cent. interest.

Coupons of interest for the first year to be given payable in one year,

all leasing mortgage on Mr Cook' property on Race street; not before P. C. Cuvelier on Common st.
M'ch 26, '82.

Document D.

75 (N. O. Com. Bulletin, M'ch 1, '82.)

Am. gold 1.69, 1.70.
" " M'ch 4, 1.70, 1.80.

(N. O. Daily Crescent, 1882.)

Am. gold M'ch 7, 1.70 1.75,
Sterling exchange, " 31, 1.67 1.70.

Document E.

Memo. notes and interest paid B. & A. Soulé.

Year.	Mo.	Da.		Interest.	Notes.
1869	Oct.	12			
1871	Nov.	27			
1872	June	5			
1873	July	12			600
1877	Mch.	26		1,000 00	
1878	"	26		1,000 00	
1879	"	26		1,000 00	
"	Apl.	6		30 00	
1880	"	11		1,000 00	1,000 00
1881	"	6		600 00	1,000
1882	"	26		600 00	
1883	June	26		600 00	1,000 00
1875	April	11		600 00	600
1875	Mch.	29		600 00	600
				10,057 00	6,200

Document F of ten papers.

No. 1.

Interest on Mr. W. H. Cook's two notes, due 26–29 March, 1873, amounting to 5,275, 366 days, to 29 March, 1874, @ 10%, $536.20.
N. O., 11 *April*, 1874.

76 No. 2.

Received of Wm. H. Cook, esq., the interest on his mortgage notes, am'tg to $11,100, up to the 29th inst.
New Orleans, 30th March, 1867.
(Signed) B. & A. SOULIE.

No. 3.

Mr. W. H. Cook Dr. to B. & A. Soulé.

For interest on his several notes amounting to $11,000, @ 8%, from 29 March, 1865, to 29th March, 1866, 360 days, $910.20.

NEW ORLEANS, *July* 12*th*, 1866.

Received above amount in full.
(Signed) B. & A. SOULIE,
Per P. A. BAGAS.

[2-cent int. rev. stamp affixed & cancelled.]

No. 4.

Wm. H. Cook, esq., Dr. to B. & A. Soulie.

For his interest on his notes as follows:

5 notes amounting to $550, due 26th March, 1863, for 2 years, to 26 March, 1865, at 8%	$88
Ditto, am't'g to 10,550, from 26 March, 1864, to 26 March, 1865, on' year, at 8%	844
	$932
Rec'd on account 12th October, 1863	100
	$832

Received New Orleans, 11th October, 1864, of W. H. Cook, esq., payment of the above amount in full.
(Signed) B. & A. SOULIE.

77

No. 5.

Received, New Orleans, 12th October, 1863, of Mr. W. C. Cook, one hundred dollars, to be accounted for on future settlement.
$100.00.
(Signed) B. & A. SOULIE.

No. 6.

Wm. H. Cook to B. & A. Soulie.

Interest on 10 notes am't'g to $11,100 for one year, to 29th inst., 366 days, at 12%	$1,354 20
Amount of five notes	550
	$1,904 20

We beg leave to call your attention to the fact that the above is interest accrued and due, not discount as generally practised here.

No. 7.

N. O., 5 *March*, 1871.

Mr. W. H. Cook Dr. to B. & A. Soulie.

For interest on his four notes due 29th March, 1870, amounting together to $7,912.50, for one year, to 28-29 March, 1871, 365 days, at 10%	$804 49
& on account of above notes	1,000
U. S. revenue stamps	4 05
	$1,808 54

No. 8

Received of Mr. W. H. Cook interest on his five notes amounting to $10,550.00 for one year from date, 26th March, 1869, to 26 March, 1870. (Sixty-nine.)

78 New Orleans, 29 March, 1869.

(Signed) R. & A. SOULIE,
Per P. A. BAGAS.

No. 9.

Interest on Mr. W. H. Cook's five notes due 26-29 March, 1869, amounting together to $10,550, for one year, to 26-29 March, 1870, 366 days, at 10% $1,072 88
One note of 2,000 00

$3,110 68

N. O., 30th March, 1870.

[Stamps, $4.]

No. 10.

Interest for one year, to 26-29 March, 1872, on W. H. Cook's three notes due 26-29 March, 1871, 366 day', on $6,857.50, @ 10% $697 22
One note due 29 March, 1873 ..... 1,000 00
Interest thereon to 29th June, 101 days, @ 10% 44 42

2,224 14

Document G consists of eight notes.

No. 1.

$1,582.50.] NEW ORLEANS, *March* 26, 1863.

Two years after date I promise to pay to the order of myself fifteen hundred and eighty-two $\frac{50}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

79 W. H. COOK [cancelled].

[10-c. int. rev. stamp annexed & cancelled.]

No. . Due 26-29 M'ch, '64.

(Across the face:)
Rec'd payment.
N. O. 25 June, 1873.

R. & A. SOULIE,
Per P. A. BAGAS.

(Across the face:)
No Varietur.

P. CH'S CUVELIER,
Not. Pub.

(Endorsed:)
Interest paid to 26 March, 1865. N. Orleans, 11th October, 1864.
Interest paid to 26 inst. New Orleans, 29 March, 1867.

Interest paid to 26 inst. New Orleans, 29 March, 1868.
W. H. COOK.

Interest paid to 26 inst. New Orleans, 29 March, 1869.
W. H. COOK.

Interest paid to 26 March, 1870. New Orleans, 11th April, 1870.
Interest paid to 26–29 March, 1871. New Orleans, 6 April, 1871.
W. H. COOK.

Interest paid to 26 March, 1872. New Orleans, 18th April, 1872.

No. 2.

$2,667.50. NEW ORLEANS, *March* 26, 1862.

Two years after date I promise to pay to the order of myself twenty-six hundred and thirty-seven $\frac{50}{100}$ dollars, value received, with
30 interest at the rate of eight per cent. per annum from maturity until paid.

W. H. COOK [canceled].

No. Due 26–29 M'ch, '62.
(Across the face:)
Ne varietur.
New Orleans, M'ch 26, 1862.

P. CH'S CUVELIER,
Not. Pub.

(Endorsed:)
Interest paid to 26th March, 1865. New Orleans, 11 Oct., '64.
Interest paid to 26 inst. New Orleans, 30 March, 1867.
Interest paid to 26 March, inst. New Orleans, 29 March, 1868.
W. H. COOK.

Interest paid to 26 March, inst. New Orleans, 29 March, 1869.
W. H. COOK.

No. 3.

$55. NEW ORLEANS, *March* 26, 1862.

One year after date I promise to pay to the order of myself fifty-five dollars, value received, with interest at the rate of eight per centum per annum from maturity until paid.

W. H. COOK.

No. Due 26–29 M'ch, '63.
(Across the face:)
Ne varietur.
New Orleans, M'ch 26, 1862.

P. CH'S CUVELIER,
Not. Pub.

(Endorsed:) W. H. Cook.
Interest paid to 26th March, 1865. N. Orleans, 11 October, 1864.

$1655. NEW ORLEANS, *March* 26, 1862.

Two years after date I promise to pay to the order of myself one thousand and fifty-five dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

W. H. COOK [cancelled].

No. . Due 26–29 M'ch, '64.

(Across the face:)
No varietur.
New Orleans, March 26, 1862.

P. CH'S CUVELIER,
Not. Pub.

[55c. int. rev. stamp affixed & cancelled.]

(Endorsed:)
Interest paid to 26 March, 1863. New Orleans, 11 October, 1864.
Interest paid to 26 March, 1867. N. Orl's, 30 March, 1867.
Interest paid to 26th inst. New Orleans, 29th March, 1868.
W. H. COOK.

Interest paid to 26 inst. New Orleans, 29 March, 1869.
W. H. COOK.

Interest paid to 26 March, 1870. New Orleans, 11th April, 1870.

No. 5.

$165. NEW ORLEANS, *March* 26, 1862.

One year after date I promise to pay to the order of myself one hundred and sixty-five dollars, value received, with interest at the
82 rate of eight per cent. per annum from maturity until paid.

W. H. COOK [cancelled].

No. . Due 26–29 M'ch, '63.

(Across the face:)
No varietur.
New Orleans, M'ch 26, 1862.

P. CH'S CUVELIER,
Not. Pub.

(Endorsed:) W. H. Cook.
Interest paid to 26 March, 1865. New Orleans, 11 October, 1864.

No. 6.

$137.50. NEW ORLEANS, *March* 26, 1862.

One year after date I promise to pay to the order of myself one hundred and thirty-seven $\frac{50}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

W. H. COOK [cancelled].

No. . Due 26–29 M'ch, '63.

(Across the face:)
No varietur.
New Orleans, March 26, 1862.

P. CH'S CUVELIER,
Not. Pub.

(Endorsed:) W. H. Cook.
Interest paid to 26 March, 1865. New Orleans, 11 October, 1864.

No. 7.

$110. NEW ORLEANS, *March* 26, 1862.

One year after date I promise to pay to the order of myself one hundred and ten dollars, value received, with interest at the rate
83 of eight per cent. per annum from maturity until paid.

W. H. COOK [canceled].

No. . Due 26–29 M'ch, '63.

(Across the face:)
Ne varietur.
New Orleans, March 26, 1862.

P. CH'S CUVELIER,
Not. Pub.

(Endorsed:) W. H. Cook.
Interest paid to 26 March, 1865. New Orleans, 11 October, '64.

No. 8.

$82.50. NEW ORLEANS, *March* 26, 1862.

One year after date I promise to pay to the order of myself eighty-two $\frac{50}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

W. H. COOK [canceled].

No. . Due 26–29 M'ch, '63.

(Across the face:)
Ne varietur.
New Orleans, March 26, 1862.

P. CH'S CUVELIER,
Not. Pub.

(Endorsed:) W. H. Cook.
Interest paid to 26 March, 1865. New Orleans, 11th October, 1864.

Document marked X.

N. O., 30TH DEC., 1876.

To EULALIE & LOUISE SOULIE,
60 *Boulevard Waleskerbes, Paris:*

Immediately transfer, really, Cook's notes to alien. Notify us by cable. Let transferee telegraph Schmidt to sue.

(Signed) BACAS.

84 *Act of procuration and substitution of procuration filed by special examiner.*

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

By this instrument of procuration, be it known that on this twelfth day of January, in the year of our Lord one thousand eight hundred

and seventy-five, before me, Reuben Young, a notary public in and for this parish and city of New Orleans, State of Louisiana, aforesaid, duly commissioned and sworn, personally came and appeared Mr. Bernard Hollis, of this city, who declared that he had made and appointed, and does by these presents make, nominate, ordain, constitute, and appoint, and in his place and stead depute and put Messrs. Henry Deane and Paul Allard, both of this city, to be his true and lawful attorney in fact, general and special, with full power to act jointly and separately, giving and by these presents, granting unto the said attorneys full power and authority for him and in his name and behalf and to his use to conduct, manage and transact all and singular his affairs, business and concern in the State of Louisiana, of whatever nature or kind, without any exception or reservation, to open all letters of correspondence addressed to constituent and to answer the same; to make deposits and draw money out of any bank or banks wherein the same may have been deposited in the name or for account of constituent; to indorse drafts, bills of exchange, acceptances, and promissory notes or other obligations for collection in any bank or banks, and withdraw the same or the amount thereof at pleasure, by check or otherwise; to sell and transfer all or any shares of the capital stock of any bank or banking or other corporate body or bodies owned by constituent, and receive and receipt for the dividends due or to become due thereon; to attend all or any meetings of creditors wherein the said constituent may be interested and not in his name, on all questions and cases that shall be submitted to such meetings, to attend all or any meetings of the stockholders of any bank or banks, or other corporate body or bodies, wherein the said constituent may be interested and not in the name of constituent, in all questions and cases that shall be submitted at such meetings, to sell, transfer, and convey all or any part or parts of the real, personal, or mixed estate of the said constituent, and to receive the price thereof, also to purchase real, personal, or mixed estate in the name of said constituent, on such terms and conditions as the said attorneys shall think fit, but only in such cases where the purchase of real estate to liquidate and settle existing claims of the constituent, and to lease, let, or hire all or any part of the real estate belonging to the said constituent, and receive and receipt for the rents and wages thereof as the same shall fall due, and for the full execution of the purposes aforesaid, to make, sign, and execute in the name of the said constituent all acts whether of sale, lease, release, contract, compromise, covenant, deed, agreement or otherwise, that shall or may be requisite or necessary, and bind the said constituent thereby as firmly as if the same were or had been his own proper acts and deeds; to give and consent release and cancelment, before or after payment of all inscriptions of mortgages or other privileges, to receive and acknowledge notices of protest of all or any bills, drafts, or promissory notes to which the said constituent may be a party, and to act for the said constituent and be his substitute in all cases wherein he may be appointed the agent or attorney of others, and to ask, demand, have, take, and by all lawful means and ways to recover and receive of and from all and all and every person and persons whomsoever, body or bodies corporate, all and every such sum or sums of money, goods, debts, property, and effects whatsoever, as now is, or are or may hereafter be in his, her, or their custody or possession, due, owing, coming, or belonging to him, the said constituent, whether by bond, bill, note, book debt, account consignment, bequest, or for and by what other reason or means soever, and to that end with whom it

may come, and to adjust and settle all accounts, and upon recovery and receipt in the premises to make and give good and sufficient discharges and acquit'ances, to recover and receive all successions in which
88 the said constituent may or shall become interested, to accept the same firmly and simply, or under the benefit of inventory, to settle and liquidate said successions, and for that purpose to make all inventories, partitions, sales, and other acts requisite and necessary in the premises, to appear before all courts of law and equity, there to do, prosecute, and defend as occasion shall require, or to compromise, compound, and agree in the premises, by arbitration or otherwise, as the said attorneys shall in their discretion think fit. Also to apply for and obtain all and any attachments, sequestrations, injunctions, and appeals, give the requisite security and and sign the necessary bonds. And generally to do and perform all and every other act, matter and thing whatsoever as shall or may be requisite and necessary, touching or concerning the affair, business, and honor of the said constituent as fully, amply, and effectually, and to all intents and purposes with the same validity as if all and every such
89 act, matter or thing were, or had been herein, particularly stated, expressed and especially provided for, or as the said constituent could or might do, if personally present, and the said constituent hereby agrees to ratify and confirm all and whatsoever the said attorneys shall lawfully do or cause to be done by virtue of this act of procuration.

And now the said Alfred Bernard Soulie declared that by virtue of the powers and authority vested in him by the following procuration, viz:

1st. A certain procuration to him given by Misses Eulalie Louise Soulie, Celeste Soulie, and Marie Coralie Soulie, per act passed before Mr. Jousseand and his colleague in Paris, France, on the third day of August, 1855, and deposited in the office of Joseph Lisbony, late a notary public in their city by act dated second February, 1856.

2d. And a general procuration to him also given by the same above named parties and Emile Leon Soulie per act passed before M.
90 Girardin and his colleague notaries in Paris, France, on the 9th December, 1869, in their capacities of heirs and universal legatees jointly with the said Bernard Soulie of the late Norbert Soulie according to the olographic will of the latter, made at Paris, France, and duly homologated by the second district court for the Parish of Orleans, which said procuration is deposited in their office by an act passed before the undersigned notary on the 10th January, 1871. He does by these presents substitute and appoint and in his place and stead depute and put Messrs. Henry Bacas and Paul Albert Bacas of this city to be his substitute and the special agents and attorneys in fact of the said Eulalie Soulie, Louise Soulie, Celeste Soulie, Marie Coralie Soulie, and Emile Leon Soulie, with full power to act jointly or separately and to do and perform and execute every act and thing which he might or could do in, by, and under the two several procurations above recited, as being the true and lawful attorney of the several above named parties, hereby agreeing to ratify and confirm all that said attorneys and
91 substitutes hereby made and appointed shall lawfully do in the premises by virtue hereof and of the above mentioned procuration.

And the said Bernard Soulie does also hereby make, nominate, constitute, and appoint, and in his place and stead depute and put the said Henry Bacas and Paul Albert Bacas to represent him and for him and and in his name to conduct, manage and transact, either jointly or separately, all affairs, business and concerns, touching and relative, 1st, to

the succession of the late Norbert Soulie and Altin Soulie, appertaining to their respective cleggraphic wife; 2d, to the bankruptcy of the late Pierre Deverges in his capacity of syndic of the creditors of said insolvent. To recover and receive all sums, as now are or may or shall hereafter be due and owing to said successions, or to said insolvency, to pay all those which are or shall be due by the same; to give or take proper acquittances and discharges of all sums received or paid,

92 to make all reservations of privileges and other rights, to ask and accept all guarantees by way of mortgage, antichrese, pledge and endorsement, to secure the payment of debts due to said successions, to sell, either at private or public sale, jointly with the other heirs and legatees of the said late Norbert and Altin Soulié for such sums and price, and on such terms and conditions as to the said attorneys shall seem meet, all or any part or parts of the movable or immovable property belonging to said succession, and to receive the price thereof, to grant and give release of mortgages and privileges, to let, lease, or hire all or any part of the real estate belonging to said successions, to settle and liquidate all affairs appertaining to the insolvency of the late Pierre Deverges, and for the purposes aforesaid, to sign and execute all acts that shall or may be necessary, to appear before all courts of law and equity, there to do, prosecute and defend as occasion shall require, to compound, compromise and agree, in the premises

by arbitration or otherwise, as the said attorneys shall, in their

93 discretion, think fit. And generally to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he the said constituent in his capacity of heir, legatee and testamentary executor of the late Norbert and Altin Soulie, and in his capacity of syndic of the creditors of the late Pierre Deverges, might or could do if personally present; and the said constituent hereby agrees to ratify and confirm all and whatsoever the said attorneys shall lawfully do or cause to be done by virtue of this act of procuration.

This done and passed at New Orleans in my office, the day, month, and year first above written, in presence of Jules F. Mennier and Joseph Cohn, competent witnesses, hereto required, who have signed these presents, with the said appearer, and me, notary, after due reading of the whole.

(Original signed) BÉRNARD SOULIE.
J. F. MENNIER,
JOSEPH COHN.
E. BOUNY,
Not. Pub.

94 A true copy.
[SEAL.] (Signed) E. BOUNY,
Not. Pub.

95 *Entering order, publication of testimony.—Extract from minutes, November term*, 1877.

NEW ORLEANS, *Tuesday, January* 16th, 1878.

Court met pursuant to adjournment. Present, Hon. Edward C. Billings, district judge.

CHAS. LILLO
vs.
WM. H. COOK. } No. 3068.

On motion of C. E. Schmidt and T. J. Semmes, solicitors for complain-

ant, and on suggesting that the testimony taken in this cause before J. Ward Gurley, jr., commissioner, has been returned into the clerk's office, it is ordered that publication thereof be made.

Hearing and submission of cause.—Extract from minutes of May 7th, 1878.

CHARLES LILLO
vs.
WM. HENRY COOK. } No. 3066.

This cause came on to be heard on the bill, answer, replication, and exhibits and testimony in the record, and having been argued by
96 Chas. E. Schmidt and Thos. J. Semmes for complainant, and Singleton and Browne and J. A. Campbell for defendant, the court took time to consider.

Decree.—Entered and filed June 1st, 1878.

United States circuit court, district of Louisiana.

CHARLES LILLO, PLAINTIFF IN EQUITY,
vs.
WILLIAM HENRY COOK, DEFENDANT. } No. 3066.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz: That the complainant, Charles Lillo, do recover of the defendant the sum of five thousand dollars, with interest thereon at the rate of eight per cent. per annum from the 26th day of March, 1875, until paid, and five per cent. on the aggregate amount of said principal sum and interest for attorneys' fees, with special mortgage dating and taking effect on and from the 26th March, 1862, on the land described in the bill of complainant, viz: on
97 a certain portion of ground together with the buildings and improvements thereon, the rights, ways, privileges, servitudes, and appurtenances thereunto belonging, situate in the first district of the city of New Orleans, in the square bounded by Race, Constance, Annunciation, and Robin streets, measuring in French measure one hundred and twenty feet front on said Race street by one hundred and fifty feet in depth between parallel lines, and in American measure one hundred and twenty-seven feet ten inches and four lines front by one hundred and fifty-nine feet ten inches and three lines in depth, more or less; said portion of ground being composed of, 1st, lot No. 12 of square No. 41 of suburb Lacourse, acquired by said Cook at sheriff's sale at the suit of A. & A. Mercier vs. J. F. Canonge, in the succession of Jean Mercier, as per deed of the sheriff of the parish of Orleans, dated 27th July, 1844, recorded in the late register of wills' office, in book B, fol. 185 et seq.; 2d, of lot No. 6 on a plan of E. Gotthiel, dated 5th
98 May, 1849, deposited in the office of A. E. Bienvenu, notary, as plan No. 5, acquired by said Cook from Mrs. J. B. G. Chase, per act before said notary Bienvenu, dated 8th April, 1850; and, 3d, of lot No. 5 on the same plan, acquired by the said Cook from T. W. Fulinod, per act before the same notary, dated 11th May, 1850.

And it is further ordered, adjudged, and decreed, that M. M. Cohen, esq., be appointed special master to make the computation of the amount due to the plaintiff in principal, interest, and attorneys' fees as afore-

said and costs of suit. And in case of the non-payment of the said amount at the expiration of the twenty days from the entering of the decree and confirmation of the master's report, the said special master is to cause the said property to be sold after the usual advertisements according to the law of Louisiana in similar cases, for cash, without appraisement, to the best purchaser or purchasers that can be got for the same, and that the proceeds of the said sale be paid into the registry of the court to the credit of this cause. And out of the money arising
99 by such sale the plaintiff and the defendant are to be paid their costs of their suit, and then the plaintiff is to be paid what shall be reported due to him for principal, interest, and attorneys' fees by his said mortgage. And if there shall be any residue of the said proceeds money the same is to be paid over to the defendant. But in case the proceeds of said sale prove insufficient to pay to the plaintiff the amount due him for principal, interest, and attorneys' fees on his mortgage, it be ordered and decreed that he recover of the defendant the deficiency. And it is further ordered that the said master do file a report herein, the court reserving the consideration of all further directions until after such report shall have been made.

June 1st, 1878.

(Signed) EDWARD C. BILLINGS, *Judge.*

100 *Petition for appeal.—Filed June 11th, 1878.*

Circuit court of the United States, district of Louisiana.

CHARLES LILLO
vs. } No. 3026.
W. H. COOK.

To the honorable the judges of the circuit court aforesaid:

The petition of W. H. Cook, the defendant aforesaid, respectfully shows that he is aggrieved by the decree of this honorable court in the cause above mentioned, rendered the 1st day of June, 1878, at the present term of this court. He respectfully prays for an appeal to the Supreme Court of the United States at its next term, to be held in October next, at Washington City, at that the appeal may be a supersedeas; he prays the court to determine the amount of the bond to be given, and that he have leave to file the same within sixty days from the date of the decree in this court with good and sufficient securities; and for all such further order and decree as in the premises may be granted, and for general relief.

101 (Signed) SINGLETON & BROWNE,
Solicitors for Defendant.

(Do.) JNO. A. CAMPBELL,
Of Counsel.

Order.

An appeal to operate as a supersedeas is allowed in this case as prayed for and according to law returnable to the Supreme Court of the United States on the second Monday of October, 1878, the appellant giving bond in the sum of five hundred dollars, with good and solvent sureties, conditioned as the law directs.

New Orleans, June 11th, 1878.

(Signed) EDWARD C. BILLINGS, *Judge.*

Bond for appeal.—Filed June 17th, 1878.

Know all men by these presents, that we, William H. Cook, as principal, and Edward S. Keep, as sureties, are held and firmly bound unto Charles Lillo in the full and just sum of five hundred dollars, to be paid to the said Charles Lillo, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this
102 13th day of June, in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court, wherein Charles Lillo is plaintiff and William H. Cook defendant, judgment was rendered against the said William H. Cook; having obtained an appeal and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Charles Lillo through his attorneys, C. R. Schmidt and T. J. Semmes, said Lillo being a foreigner and absent, citing and admonishing said Lillo to be and appear at a Supreme Court of the United States to be holden at Washington the 2d Monday of October next.

Now, the condition of the above obligation is such, that if the said William H. Cook shall prosecute his appeal to effect, and answer all costs if he fail to make his plea good, then the above obligation to
103 be void; else to remain in full force and virtue.

(Signed) WM. H. COOK. [L. S.]
(Do.) E. S. KEEP. [L. S.]

Sealed and delivered in the presence of—
(Signed) R. H. BROWNE.

Approved.
(Signed) EDWARD C. BILLINGS,
Judge.

DISTRICT OF LOUISIANA, ss:

Edward S. Keep, surety on the within bond, being duly sworn, says that he resides in the city of New Orleans, Louisiana, that he is worth the sum of five hundred dollars over and above his debts and liabilities and property exempt from execution. Subscribed and sworn.
(Signed) E. S. KEEP.

Subscribed and sworn before me this 17th day of June 1878.
(Signed) F. B. VINOT,
U. S. Comm'r.

104 UNITED STATES OF AMERICA.

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 103 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial in the case Charles Lillo versus William Henry Cook, No. 8696 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court at the city of New Orleans, this 20th day of August A. D., 1878.

[Seal.] F. A. WOOLFLEY, *Clerk.*

I, [illegible] clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do certify that [illegible] A. Woolley, [illegible] above certificate as that of the present clerk of the Circuit Court for the fifth circuit and district of Louisiana, and that, at the date of said certificate, said [illegible] is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 29th day of August, A. D. 1878.

EDWARD C. BILLINGS,
Judge.

105 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Charles Lillo greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the second Monday of October next, pursuant to a petition and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein William Henry Cook is defendant and appellant, and you are complainant and appellee, to show cause, if any there be, why the judgment rendered against the said William Henry Cook, as in said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 12th day of June, in the year of our Lord one thousand eight hundred and seventy-eight.

EDWARD C. BILLINGS, *Judge.*

106 (Indorsed:) United States circuit court. No. 3093. Charles Lillo vs. Wm. H'y Cook. Citation.

Marshal's return.

Received Jun. 12, 1878, by the U. S. Marshal, and on the 13th day of June, 1878, served a true copy of the within citation on Charles Lillo, complainant and appellee herein, through his attorney, Thos. J. Semmes, esqr., by handing the same to him, the said Thos. J. Semmes, in person, in the city of New Orleans.

W. G. ELLIOTT,
Dy Marshal.

On this 13th day of June, 1878, personally appeared before me William G. Elliott a deputy U. S. marshal for the district of Louisiana, who makes oath that he served a copy of the within citation on Thos. J. Semmes, esq., as stated in his official return hereon.

W. G. ELLIOTT.

Sworn to and subscribed before me this 13th day of June, 1878.

F. B. VINOT,
U. S. Comm'r.

(Indorsement on cover:) No. 492. William H. Cook, appellant, vs. Charles Lillo. Louisiana C. C. U. S. Filed 30th September, 1878.

Bond for appeal.—Filed June 17th, 1878.

Know all men by these presents, that we, William H. Cook, as principal, and Edward S. Keep, as sureties, are held and firmly bound unto Charles Lillo in the full and just sum of five hundred dollars, to be paid to the said Charles Lillo, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this
102 13th day of June, in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court, wherein Charles Lillo is plaintiff and William H. Cook defendant, judgment was rendered against the said William H. Cook; having obtained an appeal and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Charles Lillo through his attorneys, C. E. Schmidt and T. J. Semmes, said Lillo being a foreigner and absent, citing and admonishing said Lillo to be and appear at a Supreme Court of the United States to be holden at Washington the 2d Monday of October next.

Now, the condition of the above obligation is such, that if the said William H. Cook shall prosecute his appeal to effect, and answer all costs if he fail to make his plea good, then the above obligation to
103 be void; else to remain in full force and virtue.

(Signed) WM. H. COOK. [L. S.]
(Do.) E. S. KEEP. [L. S.]

Sealed and delivered in the presence of—
(Signed) R. H. BROWNE.

Approved.
(Signed) EDWARD C. BILLINGS,
Judge.

DISTRICT OF LOUISIANA, *ss:*

Edward S. Keep, surety on the within bond, being duly sworn, says that he resides in the city of New Orleans, Louisiana, that he is worth the sum of five hundred dollars over and above his debts and liabilities and property exempt from execution. Subscribed and sworn.
(Signed) E. S. KEEP.

Subscribed and sworn before me this 17th day of June 1878.
(Signed) F. B. VINOT,
U. S. Comm'r.

104 UNITED STATES OF AMERICA.

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 103 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial in the case Charles Lillo versus William Henry Cook, No. 3026 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court at the city of New Orleans, this 20th day of August A. D., 1878.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. [illegible], United States [illegible] do certify, that Thomas A. Wadsley, [illegible] above certificate as clerk of the circuit court of the [illegible] the fifth circuit and district of Louisiana, was, at the time of [illegible] said certificate, and is now, the clerk of said court; that said [illegible] is in due form of law, and that full faith and credit are due to [illegible] cial attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district this 29th day of August, A. D. 1878.

EDWARD C. BILLINGS,
Judge.

105 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Charles Lillo greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a petition and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein William Henry Cook is defendant and appellant, and you are complainant and appellee, to show cause, if any there be, why the judgment rendered against the said William Henry Cook, as in said petition for appeal mentioned, should not be corrected, and why speedy justice should be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 12th day of June, in the year of our Lord one thousand eight hundred and seventy-eight.

EDWARD C. BILLINGS, *Judge.*

106 (Indorsed:) United States circuit court. No. 3066. Charles Lillo *vs.* Wm. H'y Cook. Citation.

Marshal's return.

Received Jun. 12, 1878, by the U. S. Marshal, and on the 13th day of June, 1878, served a true copy of the within citation on Charles Lillo complainant and appellee herein, through his attorney, Thos. J. Semmes, esqr., by handing the same to him, the said Thos. J. Semmes in person, in the city of New Orleans.

W. G. ELLIOTT,
D'y Marshal.

On this 13th day of June, 1878, personally appeared before me William G. Elliott a deputy U. S. marshal for the district of Louisiana, who makes oath that he served a copy of the within citation on Thos. J. Semmes, esq., as stated in his official return hereon.

W. G. ELLIOTT.

Sworn to and subscribed before me this 13th day of June, 1878.

F. B. VINOT,
U. S. Comm'r.

(Indorsement on cover:) No. 492. William H. Cook, appellant, vs. Charles Lillo. Louisiana C. C. U. S. Filed 30th September, 1878.

Supreme Court of the United States.

No. 492.

IN EQUITY.

WILLIAM H. COOK, APPELLANT,

vs.

CHARLES LILLO.

STATEMENT.

In March, 1862, Cook borrowed $10,000 Confederate money from B. and A. Soulie, acting for themselves or as representatives of their sisters Eulalie and Louise Soulie, (all citizens of Louisiana), and gave his notes secured by mortgage on real estate in New Orleans, for the payment thereof. Five of the notes were for the principal, and five, coupon notes, for the interest.

Cook, since these notes fell due in 1864, and up to 1875, has paid all of these notes, with a large amount of interest, excepting the two now sued on, and these have been reduced by payments on account, respectively to $2000 and $2000.

Cook has paid on account of this debt, in principal and interest, since 1864, $16,127.63 in U. S. currency.

Until July 12, 1866, only 8 per cent. interest was demanded (in accordance with the contract) by the

Soulies, and paid by Cook—from that date to March 30, 1875, usurious interest was exacted and paid.

In 1867, 10 per cent., 1868, 12 per cent., 1869-71, 10 per cent., 1872, 9 per cent., 1873-1875, 10 per cent.

The complainant now seeks to foreclose the mortgage by bill in equity.

The respondent and appellant admits the execution of the notes and mortgage, but sets up in avoidance thereof:

1st. That the consideration of the notes was Confederate money,—that it was an illegal currency, and was, at the time of the loan, about 40 per cent. below par, i. e. $1 in lawful currency was worth $1.70 in Confederate money.

2d. That the respondent has paid a much larger sum, (to-wit: $16,727.63 in U. S. currency,) since the maturity of these notes, to B. and A. Soulie, the lenders of the money, than was ever properly due at any time on them. And that these payments have extinguished these notes.

3d. That the payments made by him have not been duly and legally applied on the notes, and that the Soulies have exacted usurious and illegal interest... *contrary to the terms of the contract*, and the laws of the State—which should have been applied to the principal

4th. That the plaintiff is not the legal holder and owner of said notes.

5th. That even if he be the owner, he acquired

them long after maturity, and subject to all equities and defences of the maker.

And respondent asked for a reference and statement of accounts.

ASSIGNMENT OF ERROR.

1st. That the Court erred in holding that there was no proof that the loan was not made in Confederate money.

2d. That there is error in not finding that Confederate money was only worth about 60 cents on the dollar, and in not decreeing that the debt should be so estimated, and the interest calculated on this basis, which would have so reduced the debt, that the payments would have extinguished it.

3d. That there is error in not applying the usurious interest exacted and paid, to the payment of the principal.

4th. That there is error in not dismissing the bill for want of jurisdiction, all the real parties being citizens of Louisiana.

ARGUMENT.

We think that if it be not shown in this case that the loan (the consideration of the notes) was Confederate money, it would be difficult to establish any fact by evidence.

It is true that B. and A. Soulie gave Cook a check for the $10,000 loaned, on the Bank of Louisiana,

dated 27th March, 1862, but the following facts are established:

1st. That *there was no other currency at the time* in New Orleans, and the banks were not allowed to deal in other currency.

Gaetan, Trans. p. 22; W. H. Cook, p. 23; W. C. Cook, p. 24.

2d. That B. and A. Soulie had only Confederate money to their credit in the bank, upon which they drew this check in favor of Cook.

See testimony Monteroy, cashier, pp. 21, 22.

In fact the complainant did not attempt to rebut the evidence, that the consideration was Confederate currency.

It is also abundantly shown that $1 in lawful money was then worth $1.70 in Confederate currency, i. e. $1 in this latter currency was only worth $0.58.8 in lawful money.

Trans., pp. 22 and 29.

Applying this scale of value to the $10,000 Confederate currency, loaned, we should have in *lawful* money say $5380. This is the proper basis upon which the calculation should have been made, and if we are correct, then it will be readily seen that the 2d ground of defence urged by defendant is good and valid, and should have been maintained.

E. G. $10,000, worth in legal currency..... $5,380 00
Interest 8 per cent. from March 28, 1862, to

March 26, 1876, 8 per cent..... 6,612 60
Add excess of interest (usurious) charged
and collected..... 1,735 25

$14,253 85

Cook paid $16,727 63 in lawful currency.

But it is also in evidence that about the date these notes of Cook fell due (in 1864) Confederate currency in New Orleans was worth 10 cents on the dollar for greenbacks, i. e. $1 in greenbacks was worth $10 Confederate currency.

See Giffney's testimony, p. 22.

We think the case of Bissell vs. Heyward, 96 U. S. 581, and the authorities there cited, covers this case exactly, and is decisive of it.

The contract in that case was made "payable in terms in dollars," just as in this case.

Here the contract was made by residents of New Orleans, and citizens of Louisiana, for it is admitted that B. Soulie and Eulalie and Louise Soulie were all citizens of Louisiana.

See admission, Trans. p. 15.

They were all under Confederate domination and authority. It would be a most violent presumption to suppose that anything else entered the minds of the contracting parties, than the payment of the currency in which they were dealing, and which was then the only currency known to them, or in which they could deal.

Under the Louisiana decision, as well as the Constitution of Louisiana of 1868, Art. 127, contracts, the consideration of which was Confederate currency, were utterly null and void, and could not be enforced.

20 La. Ann. 37, 138, 167.

22 La. Ann. 132, 485.

21 Ann. 305.

19 Ann. 257, 269, 464.

We contend also that Lillo, the complainant, is not the holder and owner of the notes sued on. That they either belong to B. and A. Soulie, or Eulalie and Louise Soulie, all of whom with Cook, are and were citizens of Louisiana, and that the transfer, or pretended transfer to Lillo, was and is a mere fictitious thing, for the purpose of giving the Federal Court jurisdiction, and to evade the construction placed upon such contracts by the courts of Louisiana.

All parties except Lillo are citizens of Louisiana.

See Admission, p. 15.

An attempt was made to prove by Bacas, the agent of the Soulies, that these notes belonged to Eulalie and Louise Soulie, but every document in the record, referring to these notes—those signed by Bacas, the witness, as well as B. and A. Soulie—show that these notes belonge to B. and A. Soulie, and not to Eulalie and Louise Soulie.

See statements of interest, and receipts for payments on these notes in name of B. and A. Soulie, and B. and

A. Soulie, per pro. Bacas. Tr. pp. 28, 29, 30, and 31. Not one of them is an agents for Eulalie and Louise Soulie.

Besides Bacas stated to W. C. Cook, not 30 days before the filing of the bill, that Mr. Soulie was the owner of them.

Trans. p. 27.

There was no transfer of these notes by Eulalie and Louise Soulie (even if they were the bona fide owners of them) to Lillo, for Bacas says:

"I had possession of these notes as the agent of B. and A. Soulie, until about 2 or 3 weeks before the 30th December, 1876, (the bill was filed with the notes as exhibits, January 11, 1877,) and my brother put them into the possession of C. E. Schmidt, Esq. Now who is Mr. Schmidt?" Bacas tells us: "Mr. Schmidt has long been the attorney of B. and A. Soulie."

Rec. p. 25.

Lillo and Eulalie and Louise Soulie reside in Paris, France. (See Cable, p. 34). The notes were always in New Orleans in the hands of Bacas, as the agent of B. and A. Soulie, or those of C. E. Schmidt, Esq., as the attorney of B. and A. Soulie. No mutual transfer to Lillo was possible.

The cable sent to Eulalie and Louise Soulie by Bacas, requests: "Notify us by cable," i. e. of the transfer. No such notification was given.

Bacas, Trans. p. 25.

We contend, therefore, that there was no transfer to Lillo at all. It was a merely fictitious thing to give the Federal Courts jurisdiction. Lillo had abundant opportunity to show that there was a real transfer. The notes were never out of Mr. Schmidt's possession. Not even a cable from Eulalie and Louise Soulie to the latter, was produced to show a pretended transfer.

See Barney vs. Baltimore City, 6 Wallace, p. 288, and authorities there cited.

If there was any real transfer, either to Eulalie and Louise Soulie or to Lillo, the complainant, Louise and Eulalie Soulie were affected with notice of all the equities in Cook's favor, because B. and A. Soulie, their agents, were cognizant of all the facts touching the transaction, and knew that the consideration was Confederate currency. Lillo took the notes long after their maturity (if he took them at all), and hence, Cook can plead all defences against him.

It was contended in the Court below that the acknowledgements by Cook, subsequent to the Rebellion, estopped him from setting up "Confederate" consideration as a defence, and his endorsements were quasi-renewals. But these cannot change the nature of the transaction.

Price vs. Lyon, 33 N. Y., 55.

That usurious interest was charged and paid, is not disputed.

The Circuit Court maintained that "the doctrine

"laid down by the authorities is that a party who pays "usurious interest cannot recover it back, because he "is under a natural obligation to pay that which he con- "tracts to pay."

But there was no contract here to pay usurious interest. The obligation was to pay 8 per cent. only, not 9, 10, and 12 per cent. Cook was compelled to pay this usurious interest by the exacting and rapacious mortgagee to save his property from sacrifice.

It will be seen by examining document E, p. 30, and the statement on pp. 30 and 31, that Cook paid as high as 12 per cent., when the legal, as well as the contract rate was 8 per cent.

We have made the calculation and find that he paid $1735.25 usurious interest, from 1867 to 1875. We do not seek to recover this back, but we do ask that it may be applied to the liquidation and extinction of the principal.

A Court of Equity will scrutinize closely the dealings between a mortgagee and mortgagor. The former is in the power and at the mercy, ofttimes, of the latter, and where unjust and illegal advantage has been taken of his necessities, a Court of Equity ought to relieve him.

And we ask this Honorable Court to do so, in this case, and to reverse the decree herein rendered by the Court *a quo*.

The sum paid on the usurious agreement will in equity be applied as a payment on the original debt.